Supreme Court, U.S.
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No. 14-419

In the

Supreme Court of the United States of America

SILA LUIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

JOINT APPENDIX

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Petition of Writ of Certiorari filed on October 7, 2014
Writ of Certiorari granted on June 8, 2015

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Relevant Docket Entries
United States District Court
Southern District of Florida
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Date Filed	DE#	Docket Text
Oct 2 2012	1	EX PARTE COMPLAINT for Temporary Restraining Order and Preliminary Injunction against Myriam Acevedo Sila Luis Elsa Ruiz.. USA Filer No Filing Fee Required filed by United States of America. (Attachments: # 1 Civil Cover Sheet)(nc) (Entered: 10/02/2012)
Oct 2 2012	4	EMERGENCY EX PARTE MOTION for Temporary Restraining Order (Responses due by 10/19/2012) and Preliminary Injunction and Supporting Memorandum of Law by United States of America. (Attachments: # 1 Text of Proposed Order)(nc) (Entered: 10/02/2012)
Oct 2 2012	5	DECLARATION OF Special Agent Clint E. Warren In Support of 4 EMERGENCY EX PARTE MOTION for Temporary Restraining Order and Preliminary Injunction and Supporting Memorandum of Law by United States of America. (nc) (Entered: 10/02/2012)

Oct 3 2012	11	TEMPORARY RESTRAINING ORDER re 4 Emergency Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction and Supporting Memorandum of Law by United States of America. This temporary restraining order shall remain in force until the close of business on the 13th day of October 2012 or at such later date as may be extended by the Court or agreed upon by the parties. (Preliminary Injunction Hearing set for 10/12/2012 04:00 PM in Miami Division before Judge Cecilia M. Altonaga.) Signed by Senior Judge Paul C. Huck on 10/3/2012. (See Order for full details) (nc). (Entered: 10/03/2012)
Nov 5 2012	30	ORDER granting 29 Motion to Modify Temporary Restraining Order Signed by Senior Judge Paul C. Huck on 11/5/2012. (cqs) (Entered: 11/05/2012)
Nov 7 2012	39	Motion/ Notice To Transfer Related Civil Action To The Docket Of Jusge [sic] Cooke by Sila Luis (Attachments: # 1 Exhibit Motion to Transfer Related Civil Action to the Docket of Judge Cooke)(Srebnick Howard)Event Modified on 11/8/2012 (cqs). (Entered: 11/07/2012)

Nov 16 2012	46	Corrected MOTION for Release of Funds for the Defense of the Related Criminal Case by Sila Luis. (Srebnick Howard) (Entered: 11/16/2012)
Nov 21 2012	49	RESPONSE in Opposition re 46 Corrected MOTION for Release of Funds for the Defense of the Related Criminal Case filed by United States of America. (Attachments: # 1 Exhibit A)(Torres, Susan) (Entered: 11/21/2012)
Dec 14 2012	58	MOTION for Discovery Subpoena Duces Tecum for Medical Records Pursuant to Rule 17 Fed.R.Crim.P by Sila Luis. Responses due by 12/31/2012 (Attachments: # 1 Exhibit Civil Complaint (Highlighted) # 2 Exhibit Indictment (Highlighted) # 3 Exhibit Patient Survey by Gustavo Guerrero # 4 Exhibit Letter from DOJ to Dr. Krieger # 5 Transcripts Transcript of Pretrial Detention Hearing)(Srebnick Howard) (Entered: 12/14/2012)
Dec 26 2012	64	NOTICE/RENEWED Motion to Transfer Civil Action to Docket of Judge Cooke by Sila Luis re 33 Notice (Other) 39 Motion for Miscellaneous Relief (Srebnick Howard)Text Modified on 12/27/2012 (cqs). (Entered: 12/26/2012)

Dec 27 2012	66	NOTICE by United States of America of Filing Supplemental Declaration of Clint E. Warren (Attachments: # 1 Affidavit)(Torres, Susan) (Entered: 12/27/2012)
Dec 28 2012	71	RESPONSE to Motion re 58 MOTION for Discovery Subpoena Duces Tecum for Medical Records Pursuant to Rule 17 Fed.R.Crim.P. filed by United States of America. Replies due by 1/7/2013. (Torres Susan) (Entered: 12/28/2012)
Jan 17 2013	86	Defendant's MOTION to Compel Discovery and Exclude Hearsay by Sila Luis. Responses due by 2/4/2013 (Srebnick Howard) (Entered: 01/17/2013)
Jan 25 2013	90	RESPONSE in Opposition re 86 Defendant's MOTION to Compel Discovery and Exclude Hearsay filed by United States of America. (Attachments: # 1 Exhibit A)(Torres Susan) (Entered: 01/25/2013)
Feb 1 2013	96	NOTICE by United States of America of Filing Second Supplemental Declaration of Clint E. Warren (Attachments: # 1 Affidavit # 2 Exhibit A # 3 Exhibit B)(Torres Susan) (Entered: 02/01/2013)
Feb 1 2013	97	ORDER granting 58 Motion for Discovery Signed by Senior Judge Paul C. Huck on 2/1/2013. (cqs) (Entered: 02/04/2013)

Feb 5 2013	99	NOTICE by United States of America of Filing Proposed Findings of Fact and Conclusions of Law (Attachments: # 1 Text of Proposed Order)(Torres Susan) (Entered: 02/05/2013)
Feb 15 2013	102	Proposed Findings of Fact and Proposed Conclusions of Law by Sila Luis. (Attachments: # 1 Exhibit)(Srebnick Howard) (Entered: 02/15/2013)
Feb 22 2013	103	RESPONSE/REPLY to 102 Proposed Findings of Fact & Conclusions of Law of Defendant Sila Luis by United States of America. (Attachments: # 1 Exhibit A # 2 Exhibit B)(Torres Susan) (Entered: 02/22/2013)
Mar 29 2013	110	RESPONSE/REPLY to 103 Response/Reply (Other) 102 Proposed Findings of Fact by Sila Luis. (Srebnick Howard) (Entered: 03/29/2013)
Jun 21 2013	124	ORDER denying 46 Motion for Release of Funds; granting 4 Motion for Preliminary Injunction Signed by Senior Judge Paul C. Huck on 6/21/2013. (tas) (Entered: 06/21/2013)
Jun 24 2013	125	PRELIMINARY INJUNCTION as to Defendant Sila Luis Signed by Senior Judge Paul C. Huck on 6/24/2013. (cqs) (Entered: 06/24/2013)

Aug 15 2013	126	Notice of Interlocutory Appeal as to 125 Preliminary Injunction 124 Order on Motion for Release of Funds Order on Motion for Preliminary Injunction by Sila Luis. Filing fee $455.00 receipt number 113C-5976982. Within fourteen days of the filing date of a Notice of Appeal the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Srebnick Scott) (Entered: 08/15/2013)
Sep 26 2013	135	TRANSCRIPT of probable cause hearing held on 2.6.2013 before Senior Judge Paul C. Huck 1-129 pages re: 126 Notice of Interlocutory Appeal Court Reporter: Robin Dispenzieri 305-523-5659 / Robin_Dispenzieri@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting Robin Dispenzieri before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/21/2013. Redacted Transcript Deadline set for 10/31/2013. Release of Transcript Restriction set for 12/30/2013. (rd) (Entered: 09/26/2013)

Aug 4 2014	150	MANDATE of USCA AFFIRMING the district court's order granting the government's motion for preliminary injuction with court's opinion; re 126 Notice of Interlocutory Appeal,, filed by Sila Luis; Date Issued: 8/4/2014; USCA Case Number: 13-13719-DD (mc) (Entered: 08/05/2014)

Relevant Docket Entries
United States Court of Appeals
for the Eleventh Circuit
Case No. 13-13719

May 1 2014	Opinion issued by court as to Appellant Sila Luis. Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam.
May 1 2014	Judgment entered as to Appellant Sila Luis.
May 21 2014	Petition for rehearing en banc (with panel rehearing) filed by Appellant Sila Luis. (ECF: Scott Srebnick)
Jul 9 2014	ORDER: The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled, the Petition(s) for Rehearing En Banc filed by Appellant Sila Luis are DENIED. [7214213-1]
Aug 4 2014	Mandate issued as to Appellant Sila Luis.

Case 1:12-cv-23588-PCH Document 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 12-23588-CIV-HUCK

UNITED STATES OF AMERICA,

Plaintiff,

v.

SILA LUIS, ELSA RUIZ, and MYRIAM ACEVEDO,

FILED UNDER SEAL
(Filed Oct. 02, 2012)

Defendants.

_____/

UNITED STATES' EX PARTE COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTION

Plaintiff, the United States of America, by and through the undersigned attorneys, hereby alleges as follows:

JURISDICTION AND VENUE

1. The United States brings this action for a temporary restraining order, preliminary and permanent injunction, and other equitable relief pursuant to 18 U.S.C. § 1345.

2. This Court has subject matter jurisdiction over this action pursuant to 18 U.S.C. § 1345, and 28 U.S.C. §§ 1331 and 1345.

3. This Court has personal jurisdiction over Defendants and venue is proper in this District pursuant

to 28 U.S.C. §§ 1391(b) and 1391(c) because Defendants reside in this District or transact business in this District and Defendants' actions that gave rise to this case all occurred in this District.

PARTIES

4. Plaintiff is the United States of America. At all times material to this action, the Department of Health and Human Services ("HHS") was an agency and instrumentality of the United States, and the Centers for Medicare and Medicaid Services ("CMS") was the component agency of HHS that administers and supervises the Health Insurance Program for the Aged and Disabled established by Title XVIII of the Social Security Act ("Act"), 42 U.S.C. §§ 1395 et seq. ("Medicare Program").

5. Defendant Sila Luis, a resident of Miami-Dade County, Florida, was president of LTC. Sila Luis was also an owner and operator of LTC and Professional Home Care.

6. Defendant Elsa Ruiz, a resident of Miami-Dade County, Florida, was an office administrator at LTC and an owner of Professional Home Care.

7. Defendant Myriam Acevedo, a resident of Miami-Dade County, Florida, was an office administrator at LTC.

8. LTC was a Florida corporation that did business in Miami-Dade County, Florida, as an HHA that purported to provide home health care and physical therapy services to eligible Medicare beneficiaries.

9. As of 2003, Luis was listed as the president, administrator, owner, registered agent, director, officer

and managing employee in LTC's Medicare Application and Articles of Incorporation. In April 2006, LTC obtained Medicare provider number 10-8042, authorizing LTC to submit claims to Medicare for home health-related benefits and services. Luis and Acevedo had signatory authority on the LTC corporate bank accounts.

10. Professional Home Care was a Florida corporation that did business in Miami-Dade County, Florida, as an HHA that purported to provide home health care and physical therapy services to eligible Medicare beneficiaries.

11. In October 2007, Professional Home Care obtained Medicare provider number 10-8475, authorizing Professional Home Care to submit claims to Medicare for home health-related benefits and services. As of September 2008, Ruiz has been listed as the administrator, director, owner, and vice president on the Medicare application and Articles of Incorporation for Professional Home Care. Ruiz had signatory authority on Professional Home Care's bank accounts.

THE MEDICARE PROGRAM

12. The Medicare Program ("Medicare") is a federal health care program providing benefits to persons who are over the age of sixty-five or disabled. Medicare is administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services. Individuals who receive benefits under Medicare are referred to as Medicare "beneficiaries."

13. Medicare is a "health care benefit program," as defined by 18 U.S.C. § 24(b).

Medicare Coverage of Home Health Services

14. At all times relevant to this investigation, "Part A" of the Medicare program covered certain eligible home health care costs for medical services provided by a home health agency ("HHA") to beneficiaries who required home health services because of an illness or disability that caused them to be homebound. Payments for home health care medical services under Medicare Part A were typically made directly to an HHA or provider based on claims submitted to the Medicare program for qualifying services that had been provided to eligible beneficiaries, rather than to the beneficiary.

15. Physicians, clinics and other health care providers, including HHAs, that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries. A Medicare claim was required to set forth, among other things, the beneficiary's name and Medicare information number, the services that were performed for the beneficiary, the date the services were provided, the cost of the services, and the name and identification number of the physician or other health care provider who ordered the services.

16. The Medicare Part A program reimbursed 100% of the allowable charges for participating HHAs providing home health care services only if the patient qualified for home health benefits. A patient qualified for home health benefits only if:

a. the patient was confined to the home, also referred to as homebound;

b. the patient was under the care of a physician who specifically determined there was a need for home health care and established the Plan of Care ("POC"); and

c. the determining physician signed a certification statement specifying that the beneficiary needed intermittent skilled nursing services, physical therapy, or speech therapy and that the beneficiary was confined to the home; that a POC for furnishing services was established and periodically reviewed; and that the services were furnished while the beneficiary was under the care of the physician who established the POC.

17. HHAs were reimbursed under the Home Health Prospective Payment System ("PPS"). Under PPS, Medicare paid Medicare-certified HHAs a predetermined base payment for each 60 days that care was needed. This 60-day period was called an "episode of care." The base payment was adjusted based on the health condition and care needs of the beneficiary. This adjustment was done through the Outcome and Assessment Information Set ("OASIS"), which was a patient assessment tool for measuring and detailing the patient's condition. If a beneficiary was still eligible for care after the end of the first episode of care, a second episode could commence. There were no limits to the number of episodes of home health benefits a beneficiary could receive as long as the beneficiary continued to qualify for home health benefits.

18. CMS did not directly pay Medicare Part A claims submitted by Medicare-certified HHAs. CMS contracted with different companies to administer the Medicare Part A program throughout different parts of the United States. In the State of Florida, CMS contracted with Palmetto Government Benefits Administrators ("Palmetto") to

administer Part A HHA claims. As administrator, Palmetto was to receive, adjudicate, and pay claims submitted by HHA providers under the Part A program for home health claims.

19. In order to be reimbursed, the HHA would submit a Request for Anticipated Payment ("RAP") and subsequently receive a portion of its payment in advance of services being rendered. At the end of a 60 day episode, when the final claim was submitted, the remaining portion of the payment would be made. As explained in more detail below, "Outlier Payments" are additional PPS payments based on visits in excess of the norm. Palmetto paid Outlier Payments to HHA providers under PPS where the providers' RAP submissions established that the cost of care exceeded the established Health Insurance Prospective Payment System ("HIPPS") code threshold dollar amount.

20. Medicare regulations allowed certified home health agencies to subcontract home health care services to nursing companies, registries, or groups (nursing groups), which would, in turn, bill the certified home health agency. That certified home health agency would then bill Medicare for all services provided to the patient by the subcontractor. The HHA's professional supervision over arranged-for services required the same quality controls and supervision of its own employees.

21. For insulin-dependant diabetic beneficiaries, Medicare paid for insulin injections by an HHA agency when a beneficiary was determined to be unable to inject his or her own insulin and the beneficiary had no available care-giver able and willing to inject the beneficiary. Additionally, for beneficiaries for whom occupational or

physical therapy was medically necessary, Medicare paid for such therapy provided by an HHA. The basic requirements that a physician certify that a beneficiary is confined to the home or homebound and in need of home health services, as certified by a physician, was a continuing requirement for Medicare to pay for such home health benefits.

22. While payment for each episode of care was adjusted to reflect the beneficiary's health condition and needs, Medicare regulations contained an "outlier" provision to ensure appropriate payment for those beneficiaries that had the most extensive care needs, which may result in an Outlier Payment to the HHA. These Outlier Payments were additions or adjustments to the payment amount based on an increased type or amount of medically necessary care. Adjusting payments through Outlier Payments to reflect the HHA's cost in caring for each beneficiary, including the sickest beneficiaries, ensured that all beneficiaries had access to home health services for which they were eligible.

Record Keeping Requirements

23. Medicare Part A regulations required HHAs providing services to Medicare patients to maintain complete and accurate medical records reflecting the medical assessment and diagnoses of their patients, as well as records documenting actual treatment of the patients to whom services were provided and for whom claims for reimbursement were submitted by the HHAs. These medical records were required to be sufficient to permit Medicare, through Palmetto and other contractors, to review the appropriateness of Medicare payments made to the HHA under the Part A program.

24. Among the written records required to document the appropriateness of home health care claims submitted under Part A of Medicare was a POC that included the physician order for home health care, diagnoses, types of services/frequency of visits, prognosis/ rehabilitation potential, functional limitations/activities permitted, medications/treatments/ nutritional requirements, safety measures/discharge plans, goals, and the physician's signature. Also required was a signed certification statement by an attending physician certifying that the patient was confined to his or her home and was in need of the planned home health services, and an OASIS.

25. Medicare Part A regulations required provider HHAs to maintain medical records of every visit made by a nurse, therapist, and home health aide to a beneficiary. The record of a nurse's visit was required to describe, among other things, any significant observed signs or symptoms, any treatment and drugs administered, any reactions by the patient, any teaching and the understanding of the patient, and any changes in the patient's physical or emotional condition. The home health nurse, therapist and aide were required to document the hands-on personal care provided to the beneficiary as the services were deemed necessary to maintain the beneficiary's health or to facilitate treatment of the beneficiary's primary illness or injury. These written medical records were generally created and maintained in the form of "clinical notes" and "home health aide notes/observations." Medicare regulations require that home health agencies maintain medical records for at least seven years.

DEFENDANTS' FRAUDULENT SCHEME

26. From January 2006 through July 2009, LTC billed the Medicare program approximately $63 million for home health services for approximately 1495 beneficiaries, and it was paid more than $38 million. Of this $63 million, approximately $56 million represented billings to Medicare for diabetic skilled nursing care and/or physical therapy.

27. From November 2007 through June 2012, Professional Home Care billed the Medicare program approximately $11 million for home health services for approximately 408 beneficiaries, and it was paid more than $7 million. Of this $11 million, approximately $10.5 million represented billings to Medicare for diabetic skilled nursing care and/or physical therapy.

28. According to the Cooperating Witnesses, LTC and Professional Home Care paid kickbacks and bribes to nurses and patient recruiters so that they would place patients with LTC and Professional Home Care. LTC and Professional Home Care would then fraudulently bill Medicare for home health services that were not medically necessary and/or were not provided. Cooperating Witnesses have explained that LTC and Professional Home Care billed primarily for diabetic skilled nursing care and/or physical therapy, because of the high reimbursements they could obtain for these services.

29. Patient recruiters would, in turn, pay Medicare beneficiaries kickbacks for agreeing to be placed at LTC and Professional Home Care. According to the Cooperating Witnesses, recruited beneficiaries accepted these kickbacks in return for allowing LTC and Professional Home Care to fraudulently bill the Medicare

program for home health services that were not medically necessary and/or not provided.

30. Several Cooperating Witnesses have stated that it was common knowledge that Luis owned and operated both LTC and Professional Home Care, and the patients were often interchanged between both companies. Luis and Ruiz were observed by various Cooperating Witnesses giving instructions to employees at LTC and Professional Home Care.

31. According to various Cooperating Witnesses, employees at LTC and Professional Home Care caused patient files to be falsified in order to make it appear that Medicare beneficiaries qualified for and received home health services that in reality were not medically necessary and/or not provided.

32. Virtually all of LTC's and Professional Home Care's billings to Medicare during the relevant time periods were fraudulent, in that they were tainted by unlawful kickbacks, not medically necessary, and/or not provided.

Cooperating Witnesses

33. Cooperating witnesses will provide the following information regarding LTC and Professional Home Care, Luis, Ruiz, and Acevdo, including the following individuals (the "Cooperating Witnesses"):

a. CW1 worked as a nurse for LTC and Professional Home Care from in or about 2007 through in or about 2009;

b. CW2 worked as a nurse and patient recruiter for LTC and Professional Home Care from in or about 2006 through in or about 2009;

c. CW3 worked as a nurse for LTC and as a nurse and patient recruiter for Professional Home Care from in or about 2006 through in or about 2009;

d. CW4 worked as a patient recruiter for LTC and Professional Home Care;

e. CW5 was the owner and operator of a medical clinic that purported to provide prescriptions and POCs for home health care services to Medicare beneficiaries.

f. CW6 worked at LTC as a nurse from approximately 2009 through 2010, and as a patient recruiter for Professional Home Care;

g. CW7 worked as a patient recruiter for LTC and Professional Home Care;

h. CW8 worked as a patient recruiter for Professional Home Care.

Details of the Fraudulent Scheme at LTC and Professional Home Care

CW1 - Nurse

34. CW1 worked as a nurse for LTC and Professional Home Care from in or about 2007 through in or about 2009.

35. CW1 explained to law enforcement that he/she was hired to provide skilled nursing services. But, soon after starting work, CW1 learned that the patients at LTC and Professional Home Care were being paid and did not qualify for the home health services being billed to the Medicare program. CW1 stated that LTC and Professional Home Care sought out purportedly diabetic beneficiaries because of the ability to fraudulently bill the Medicare program for skilled nursing visits two or three times per day per beneficiary, which in some cases resulted in

fraudulent Medicare billings and payments exceeding $14,000 per 60-day period for each beneficiary.

36. CW1 stated that his/her nursing notes indicated that he/she visited the patients two or three times a day, but, in reality, CW1 almost never visited the patients or provided services. CW1 would have the patients sign visit logs for visits that were never provided.

CW2 - Patient Recruiter/Nurse

37. CW2 worked as a nurse and patient recruiter for LTC and Professional Home Care from in or about 2006 through in or about 2009.

38. CW2 explained to law enforcement that he/she was hired to provide skilled nursing services. But, soon after starting work, CW2 learned that the patients at LTC and Professional Home Care were being paid and did not qualify for the home health services being billed to the Medicare program. CW2 stated that LTC and Professional Home Care sought out purportedly diabetic beneficiaries because of the ability to fraudulently bill the Medicare program for skilled nursing visits two or three times per day per beneficiary, which in some cases resulted in fraudulent Medicare billings and payments exceeding $14,000 per 60-day period for each beneficiary.

39. CW2 stated that his/her nursing notes indicated that he/she visited the patients two or three times a day, but, in reality, he/she almost never visited the patients or provided services. CW2 would have the patients sign visit logs for visits that were never provided.

40. CW2 stated he/she worked with an employee from LTC's quality control department to prepare the notes. CW2 explained that he/she paid this employee $2 per

patient note which the LTC employee completed on CW2's behalf. CW2 would provide the LTC employee with weekly blood sugar logs and the LTC employee would complete the notes and add symptoms. CW2 stated that the LTC employee falsified these nursing notes to match the symptoms on the patient's POCs. CW2 stated that this was done by the LTC employee so that the services appeared legitimate, even though the symptoms did not exist. CW2 explained that he/she had the notes completed in the same manner at Professional Home Care.

41. CW2 explained that eventually he/she began recruiting patients for LTC and Professional Home Care. CW2 was paid a kickback of approximately $1300 per patient per month for each patient prescribed skilled nursing visits. CW2 was paid a kickback of approximately $600 per cycle for each patient prescribed physical therapy. CW2 was paid kickbacks for each patient he/she recruited for LTC by Acevedo and for Professional Home Care by Ruiz.

CW3 - Patient Recruiter/Nurse

42. CW3 worked as a nurse and patient recruiter for LTC and Professional Home Care from in or about 2006 through in or about 2009.

43. CW3 explained to law enforcement that he/she was hired to provide skilled nursing services. But, soon after starting work, CW3 learned that the patients at LTC and Professional Home Care were being paid and did not qualify for the home health services being billed to the Medicare program. CW3 stated that LTC and Professional Home Care sought out purportedly diabetic beneficiaries because of the ability to fraudulently bill the Medicare program for skilled nursing visits two or three times per

day per beneficiary, which in some cases resulted in fraudulent Medicare billings and payments exceeding $14,000 per 60-day period for each beneficiary.

44. CW3 stated that his/her nursing notes indicated that he/she visited the patients two or three times a day, but, in reality, he/she almost never visited the patients or provided services. CW31 would have the patients sign visit logs for visits that were never provided.

45. CW3 also worked as the Director of Nursing ("DON") at Professional Home Care from May to October 2007, and then from April 2008 through July 2009. CW3 referred patients to Professional Home Care in exchange for $800 per patient per month ($400 of that kickback was to be paid to the patients). CW3 agreed with Ruiz that he/she would receive $1200 per month for patients that received both skilled nursing and physical therapy services ($700 of that kickback was to be paid to the patients).

CW4 - Patient Recruiter

46. CW4 worked as a patient recruiter for LTC and Professional Home Care. CW4 met directly with Luis, who agreed she would pay CW4 $1600 per patient per cycle for patients prescribed physical therapy and $1500 per patient per month for patients prescribed skilled nursing services. Bank records reflect that LTC paid CW4 $130,000 between October 2007 and July 2009.

47. CW4 and Luis agreed to similar rates for patient referrals to Professional Home Care. Bank records reflect that Professional Home Care has paid CW4 $56,000.

48. CW4 has stated that the patients he/she recruited for LTC and Professional Home Care did not qualify for either skilled nursing care or physical therapy, and that

he/she provided false home health aide certificates. In fact, CW4 never provided any home health aide services, but believes Luis asked for this documentation to make it appear that the recruiting kickback checks were legitimate payments for home health aide services.

CW5 - Owner of Medical Clinic

49. CW5 was the owner and operator of a medical clinic that purported to provide prescriptions and POCs for home health care services to Medicare beneficiaries.

50. CW5 met with Luis, who offered to pay CW5 for patient referrals in the amount of $1400 per patient, per cycle for patients prescribed physical therapy and $1500 per patient, per month for patients prescribed skilled nursing services. CW5 declined this offer.

51. CW5 received a call in 2008 from Luis, who requested that doctors employed by the clinic sign false POCs for Luis in exchange for $500 per POC. CW5 declined this offer.

52. A patient recruiter for LTC also brought patients to the clinic in order to receive prescriptions and POCs for these patients. The recruiter explained that LTC paid him kickbacks for each patient he recruited for LTC; these patients did not qualify for the prescribed medical services.

CW6 - Nurse/Patient Recruiter

53. CW6 worked as a nurse at LTC from approximately 2009 through 2010. CW6 was employed purportedly to provide nursing services at LTC to approximately 15-17 patients. However, these patients did not qualify for skilled nursing home health visits, and many were not even diabetic. CW6 stated that he/she visited the patients at

LTC approximately 2 to 3 times per week, instead of the 14 times he/she indicated in LTC's records. Instead of providing skilled nursing care, CW6 visited the patients only in order to have the patients sign visit logs for days that CW6 was not there.

54. CW6 stated that he/she subsequently began recruiting his/her own patients and approached Acevedo at LTC and discussed recruiting patients for LTC in exchange for kickbacks. Acevedo told CW6 that LTC in general had grown too large and the amount of patients at LTC looked suspicious. Acevedo explained, however, that she had another home health agency where CW6 could bring his/her recruited patients. Acevedo told CW6 to bring his/her patients to Professional Home Care, and directed CW6 to meet with one of the owners of Professional Home Care (as listed in its Articles of Incorporation).

55. CW6 met with the owner, who agreed to pay CW6 approximately $1300 per patient per month for patients prescribed skilled nursing services. The owner also agreed to pay CW6 approximately $1000 per patient per physical therapy cycle.

56. CW6 recruited approximately 5-7 patients for Professional Home Care and also worked there as a nurse. CW6 has admitted that the patients he/she recruited at Professional Home Care did not qualify for the services being billed to Medicare, and many were not even diabetic.

57. False documentation for CW6's recruited patients, including home health prescriptions and signed POCs, were received from a particular doctor. CW6 explained that he/she paid the doctor's office administrator cash kickbacks of $200 per POC in exchange for the doctor's

signature. This doctor was previously indicted in the District Court for the Southern District of Florida (Case no. 11-CR-20113) for his role in other home health frauds, and subsequently pled guilty for prescribing home health services that were not medically necessary.

CW7 - Patient Recruiter

58. CW7 stated that he/she recruited Medicare beneficiaries and paid them kickbacks to participate in the fraudulent schemes at LTC and Professional Home Care. CW7 agreed with another patient recruiter for LTC to transfer CW7's patients from another home health care agency to LTC in exchange for $1200 per month per patient if the patient was prescribed skilled nursing and $1000 if the patient was prescribed physical therapy. Those rates were later increased to $1500 per patient after CW7 threatened to leave LTC and transfer his/her patients to another home health agency.

59. CW7 stated that when he/she moved over to LTC, he/she was joined by CW1, who was assigned to act as the nurse for CW7's patients because CW1 was aware that the patients did not in fact need the skilled nursing services that had been prescribed for them. CW7 met directly with his/her patients and agreed to pay them kickbacks.

60. CW7 also recruited a patient for Professional Home Care, for whom he/she was paid $1200 per month.

CW8 - Patient Recruiter

61. CW8 acted as a patient recruiter for Professional Home Care. CW8 recruited a patient and agreed with Ruiz to receive in exchange approximately $1200 per month for the prescribed skilled nursing services and another approximately $800 per cycle for the physical therapy

services. CW8 was aware that the patient did not require the medical services that were prescribed for him.

DISSIPATION OF ASSETS

62. Both LTC and Professional Home Care completed multiple Authorization Agreements for Electronic Funds Transfer, by which they agreed to accept Medicare payments via direct deposit into their bank accounts at SunTrust Bank, Bank Atlantic, and International Finance Bank. For LTC, the Electronic Funds Transfer Agreements ("EFTs") were signed by Sila Luis, and Myriam Acevedo was listed as the contact person. For Professional Home Care, the EFTs were signed by Sila Luis's husband at the time, and Elsa Ruiz was listed as the contact person.

63. From January 2006 through July 2009, Medicare deposited approximately $38 million into LTC's corporate bank accounts, either through checks or electronic funds transfers.

64. From November 2007 through June 2012, Medicare deposited approximately $7 million into Professional Home Care's corporate bank accounts, either through checks or electronic funds transfers.

65. These deposits by Medicare to LTC and Professional Home Care were in payment for the fraudulent claims submitted by LTC and Professional Home Care.

66. Defendants implemented schemes to transfer these Medicare monies to themselves both directly and by using shell companies. Evidence gathered during the government's investigation indicates that Defendant Luis had family members open shell companies, and that Luis

would transfer monies to these companies. In addition, a recruiter for LTC opened a shell company that would receive checks directly from LTC, money which the recruiter would then use to pay kickbacks to beneficiaries.

67. Defendants also withdrew substantial amounts of cash from LTC's and Professional Home Care's corporate accounts in order to pay kickbacks in furtherance of their fraudulent schemes.

68. Defendants also used Medicare monies for foreign travel, to pay substantial salaries to themselves, to purchase multiple properties, and to purchase luxury cars.

69. For example, of the monies paid by Medicare, Defendant Sila Luis received approximately $4.49 million; Myriam Acevedo received approximately $1.52 million (with almost another million going to a company she owned); and Elsa Ruiz received close to $900,000 (she appears to have received more indirectly). As another example, approximately $225,000 of Medicare monies went to Mercedes Benz for luxury automobiles.

70. From at least January 2006 to the present, Defendants have systematically dissipated the vast majority of the funds received from Medicare by writing checks and making transfers from LTC's and Professional Home Care's bank accounts to themselves, other entities they control, and to third parties to pay for kickbacks, real estate and personal luxury items.

71. Although Medicare has paid Defendants, through LTC and Professional Home Care, $45 million since January 2006, the United States has only been able to locate assets totaling a fraction of that amount. Defendants appear to have dissipated tens of millions of dollars in

Medicare funds, and unless enjoined will continued to dissipate the proceeds of their Medicare fraud.

COUNT I

(18 U.S.C. § 1345 – Injunctive Relief)

72. The United States realleges and incorporates by reference paragraphs 1 through 71 of this Complaint as though fully set forth herein.

73. Among other things, Defendants committed a Federal health care offense, as defined in 18 U.S.C. § 24, by conspiring to commit health care fraud, conspiring to defraud the United States and to pay health care kickbacks, and by actually paying health care kickbacks in connection with a federal health care benefit program, in violation of 18 U.S.C. §§ 1349, 371, and 42 U.S.C. § 1320a-7b(b)(2)(A).

74. Defendants have already dissipated millions of dollars in proceeds of that fraud, and intend to continue dissipating the remainder of the proceeds of the fraud.

43. [*sic*] Defendants' fraud upon Medicare is a fraud against the United States and constitutes a continuing and substantial injury to the United States and its citizens.

75. The United States brings this action to protect Medicare and other funds by restraining Defendants' unlawful fraudulent conduct and to protect and restrain the transfer of funds and assets now in Defendants' hands as ill-gotten gains from their fraud upon the Medicare program.

76. Upon a showing that Defendants are committing or about to commit a Federal health care offense, the United States is entitled, under 18 U.S.C. § 1345(a)(1), to a

temporary restraining order, a preliminary injunction, and a permanent injunction, restraining all future fraudulent conduct and any other action that this Court deems just in order to prevent a continuing and substantial injury to the United States.

77. Upon a showing that defendants are alienating or disposing, or intend to alienate or dispose, property obtained as the result of a Federal health care offense, the United States is entitled, under 18 U.S.C. § 1345(a)(2), to a temporary restraining order, a preliminary injunction, and a permanent injunction, enjoining defendants from alienating, disposing, withdrawing, transferring, removing, dissipating, or disposing of any property obtained as a result of a Federal health care offense, property traceable to such violation, or property of equivalent value.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

Issue a Temporary Restraining Order and Preliminary Injunction in this matter against Defendants, and that a permanent injunction shall be issued forthwith, that orders that Defendants, their agents, servants, employees, attorneys, and all persons acting in concert and participation with Defendants, including all corporations over which they exercise control, be enjoined as follows:

1. From making or conspiring to make any false claims to the Medicare Program or any health care benefit program, or otherwise from committing any Federal health care offense, as defined in 18 U.S.C. § 24;

2. From withdrawing or transferring any moneys or sums presently deposited, or held on behalf of Defendants

by any financial institution, trust fund, or other financial agency, public or private, that are proceeds from false, fictitious, or fraudulent claims made by Defendants, or any moneys of an equivalent value to those taken through false, fictitious, or fraudulent claims;

3. From transferring, selling, assigning, dissipating, concealing, encumbering, impairing or otherwise disposing of, in any manner, assets, real or personal;

4. To preserve all business, financial, and accounting records, including bank records, that detail Defendants' business operation and disposition of any payment that directly or indirectly arose from the payment of money to Defendants on behalf of the Medicare Program;

5. To preserve all medical records, including patient records, which relate to defendants' business operation(s) and/or to services for which claims were submitted to the Medicare Program;

6. To provide an accounting of all assets, within seven calendar days, and to provide on a monthly basis, commencing forthwith, suitable reports detailing its financial condition; and

7. To complete a Financial Disclosure Statement form provided to Defendants by the United States within seven calendar days;

8. For disgorgement and restitution of all of Defendants' ill-gotten gains attributable to their fraud upon the United States; and

9. For such other and further relief as the Court shall deem just and proper.

Dated: October 2, 2012

Respectfully submitted,
WIFREDO A. FERRER
UNITED STATES ATTORNEY

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Case 1:12-cv-23588-PCH Document 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 12-23588-CIV-HUCK

UNITED STATES OF AMERICA,

Plaintiff,

v.

FILED UNDER SEAL
(Filed Oct. 2, 2012)

SILA LUIS, ELSA RUIZ,
and MYRIAM ACEVEDO,

Defendants.

_____/

DECLARATION OF SPECIAL AGENT CLINT E. WARREN IN SUPPORT OF THE UNITED STATES' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been assigned in this capacity since August 2004. Since being assigned to the FBI's Miami Field Office, I have been primarily involved in the investigation of health care fraud in the South Florida area. During that time, I have investigated numerous matters relating to alleged frauds against health insurance programs, primarily, the Medicare Program, and have attended numerous health care fraud training programs. Specifically, I have investigated numerous home health agencies engaged in fraud.

2. The statements in this Declaration are based upon information I have learned during the investigation of the Defendants and their businesses known as LTC Professional Consultants, Inc. ("LTC") and Professional Home Care Solutions, Inc. ("Professional Home Care"), including, but not limited to, information provided to me by Special Agents of the FBI and Health and Human Services-Office of Inspector General ("HHS-OIG"), public source and business records, bank records and my experience and background as an FBI Special Agent. I have also obtained information from a series of cooperating witnesses. This Declaration is being submitted for the purpose of supporting the temporary restraining order and preliminary injunction sought by the United States in this matter, and I have not included each and every fact known to me concerning this investigation.

3. Based on my training and experience and the facts as set forth in this declaration, there is probable cause to believe that violations of 18 U.S.C. §§ 1349 (conspiracy to commit health care fraud), 371 (conspiracy to defraud the United States and to commit offenses against the United States), and 42 U.S.C. §§ 1320a-7b(b)(2)(B) (paying health care kickbacks), and related crimes have been committed by Defendants Sila Luis, Elsa Ruiz, Myriam Acevedo, and agents or employees of LTC and Professional Home Care.

THE MEDICARE PROGRAM

4. The Medicare Program ("Medicare") is a federal health care program providing benefits to persons who are over the age of sixty-five or disabled. Medicare is administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services.

Individuals who receive benefits under Medicare are referred to as Medicare "beneficiaries."

5. Medicare is a "health care benefit program," as defined by 18 U.S.C. § 24(b).

Medicare Coverage of Home Health Services

6. At all times relevant to this investigation, "Part A" of the Medicare program covered certain eligible home health care costs for medical services provided by a home health agency ("HHA") to beneficiaries who required home health services because of an illness or disability that caused them to be homebound. Payments for home health care medical services under Medicare Part A were typically made directly to an HHA or provider based on claims submitted to the Medicare program for qualifying services that had been provided to eligible beneficiaries, rather than to the beneficiary.

7. Physicians, clinics and other health care providers, including HHAs, that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries. A Medicare claim was required to set forth, among other things, the beneficiary's name and Medicare information number, the services that were performed for the beneficiary, the date the services were provided, the cost of the services, and the name and identification number of the physician or other health care provider who ordered the services.

8. The Medicare Part A program reimbursed 100% of the allowable charges for participating HHAs providing

home health care services only if the patient qualified for home health benefits. A patient qualified for home health benefits only if:

a. the patient was confined to the home (also referred to as homebound);

b. the patient was under the care of a physician who specifically determined there was a need for home health care and established the Plan of Care ("POC"); and

c. the determining physician signed a certification statement specifying that the beneficiary needed intermittent skilled nursing services, physical therapy, or speech therapy and that the beneficiary was confined to the home; that a POC for furnishing services was established and periodically reviewed; and that the services were furnished while the beneficiary was under the care of the physician who established the POC.

9. HHAs were reimbursed under the Home Health Prospective Payment System ("PPS"). Under PPS, Medicare paid Medicare-certified HHAs a predetermined base payment for each 60 days that care was needed. This 60-day period was called an "episode of care." The base payment was adjusted based on the health condition and care needs of the beneficiary. This adjustment was done through the Outcome and Assessment Information Set ("OASIS"), which was a patient assessment tool for measuring and detailing the patient's condition. If a beneficiary was still eligible for care after the end of the first episode of care, a second episode could commence. There were no limits to the number of episodes of home health benefits a beneficiary could receive as long as the beneficiary continued to qualify for home health benefits.

10. CMS did not directly pay Medicare Part A claims submitted by Medicare-certified HHAs. CMS contracted with different companies to administer the Medicare Part A program throughout different parts of the United States. In the State of Florida, CMS contracted with Palmetto Government Benefits Administrators ("Palmetto") to administer Part A HHA claims.As administrator, Palmetto was to receive, adjudicate, and pay claims submitted by HHA providers under the Part A program for home health claims.

11. In order to be reimbursed, the HHA would submit a Request for Anticipated Payment ("RAP") and subsequently receive a portion of its payment in advance of services being rendered. At the end of a 60 day episode, when the final claim was submitted, the remaining portion of the payment would be made. As explained in more detail below, "Outlier Payments" are additional PPS payments based on visits in excess of the norm.Palmetto paid Outlier Payments to HHA providers under PPS where the providers' RAP submissions established that the cost of care exceeded the established Health Insurance Prospective Payment System ("HIPPS") code threshold dollar amount.

12. Medicare regulations allowed certified home health agencies to subcontract home health care services to nursing companies, registries, or groups (nursing groups), which would, in turn, bill the certified home health agency.That certified home health agency would then bill Medicare for all services provided to the patient by the subcontractor.The HHA's professional supervision over arranged-for services required the same quality controls and supervision of its own employees.

13. For insulin-dependant diabetic beneficiaries, Medicare paid for insulin injections by an HHA agency when a beneficiary was determined to be unable to inject his or her own insulin and the beneficiary had no available caregiver able and willing to inject the beneficiary. Additionally, for beneficiaries for whom occupational or physical therapy was medically necessary, Medicare paid for such therapy provided by an HHA. The basic requirements that a physician certify that a beneficiary is confined to the home or homebound and in need of home health services was a continuing requirement for Medicare to pay for such home health benefits.

14. While payment for each episode of care was adjusted to reflect the beneficiary's health condition and needs, Medicare regulations contained an "outlier" provision to ensure appropriate payment for those beneficiaries that had the most extensive care needs, which may result in an Outlier Payment to the HHA. These Outlier Payments were additions or adjustments to the payment amount based on an increased type or amount of medically necessary care. Adjusting payments through Outlier Payments to reflect the HHA's cost in caring for each beneficiary, including the sickest beneficiaries, ensured that all beneficiaries had access to home health services for which they were eligible.

Record Keeping Requirements

15. Medicare Part A regulations required HHAs providing services to Medicare patients to maintain complete and accurate medical records reflecting the medical assessment and diagnoses of their patients, as well as records documenting actual treatment of the patients to whom services were provided and for whom claims for

reimbursement were submitted by the HHAs. These medical records were required to be sufficient to permit Medicare, through Palmetto and other contractors, to review the appropriateness of Medicare payments made to the HHA under the Part A program.

16. Among the written records required to document the appropriateness of home health care claims submitted under Part A of Medicare was a POC that included the physician order for home health care, diagnoses, types of services/frequency of visits, prognosis/rehabilitation potential, functional limitations/activities permitted, medications/treatments/ nutritional requirements, safety measures/discharge plans, goals, and the physician's signature. Also required was a signed certification statement by an attending physician certifying that the patient was confined to his or her home and was in need of the planned home health services, and an OASIS.

17. Medicare Part A regulations required provider HHAs to maintain medical records of every visit made by a nurse, therapist, and home health aide to a beneficiary. The record of a nurse's visit was required to describe, among other things, any significant observed signs or symptoms, any treatment and drugs administered, any reactions by the patient, any teaching and the understanding of the patient, and any changes in the patient's physical or emotional condition. The home health nurse, therapist and aide were required to document the hands-on personal care provided to the beneficiary as the services were deemed necessary to maintain the beneficiary's health or to facilitate treatment of the beneficiary's primary illness or injury. These written medical records were generally created and maintained in

the form of "clinical notes" and "home health aide notes/observations." Medicare regulations require that home health agencies maintain medical records for at least seven years.

DEFENDANTS' FRAUD SCHEME

18. Defendant Sila Luis, a resident of Miami-Dade County, Florida, was president of LTC. Sila Luis was also an owner and operator of LTC and Professional Home Care.

19. Defendant Elsa Ruiz, a resident of Miami-Dade County, Florida, was an office administrator at LTC and an owner of Professional Home Care.

20. Defendant Myriam Acevedo, a resident of Miami-Dade County, Florida, was an office administrator at LTC.

21. LTC was a Florida corporation that did business in Miami-Dade County, Florida as an HHA that purported to provide home health care and physical therapy services to eligible Medicare beneficiaries.

22. In 2003, Luis was listed as the president, administrator, owner, registered agent, director, officer and managing employee in LTC's Medicare Application and Articles of Incorporation. In April 2006, LTC obtained Medicare provider number 10-8042, authorizing LTC to submit claims to Medicare for home health-related benefits and services. Luis and Acevedo had signatory authority on the LTC corporate bank accounts.

23. Professional Home Care was a Florida corporation that did business in Miami-Dade County, Florida as an HHA that purported to provide home health care and

physical therapy services to eligible Medicare beneficiaries.

24. In October 2007, Professional Home Care obtained Medicare provider number 10-8475, authorizing Professional Home Care to submit claims to Medicare for home health-related benefits and services. Since approximately September 2008, Ruiz has been listed as the administrator, director, owner, and vice president on the Medicare application and Articles of Incorporation for Professional Home Care. Ruiz had signatory authority on Professional Home Care's bank accounts.

Cooperating Witnesses

25. Cooperating witnesses will provide the following information regarding LTC and Professional Home Care, Luis, Ruiz, and Acevedo, including the following individuals (the "Cooperating Witnesses"):

a. CW1 worked as a nurse for LTC and Professional Home Care from in or about 2007 through in or about 2009;

b. CW2 worked as a nurse and patient recruiter for LTC and Professional Home Care from in or about 2006 through in or about 2009;

c. CW3 worked as a nurse for LTC and as a nurse and patient recruiter for Professional Home Care from in or about 2006 through in or about 2009;

d. CW4 worked as a patient recruiter for LTC and Professional Home Care;

e. CW5 was the owner and operator of a medical clinic that purported to provide prescriptions and POCs for home health care services to Medicare beneficiaries.

f. CW6 worked at LTC as a nurse from approximately 2009 through 2010, and as a patient recruiter for Professional Home Care;

g. CW7 worked as a patient recruiter for LTC and Professional Home Care;

h. CW8 worked as a patient recruiter for Professional Home Care.

Details of the Fraudulent Scheme at LTC and Professional Home Care

26. From January 2006 through July 2009, LTC billed the Medicare program approximately $63 million for home health services for approximately 1495 beneficiaries, and it was paid more than $38 million. Of this $63 million, approximately $56 million represented billings to Medicare for diabetic skilled nursing care and/or physical therapy.

27. From November 2007 through June 2012, Professional Home Care billed the Medicare program approximately $11 million for home health services for approximately 408 beneficiaries, and it was paid more than $7 million. Of this $11 million, approximately $10.5 million represented billings to Medicare for diabetic skilled nursing care and/or physical therapy.

28. According to the Cooperating Witnesses, LTC and Professional Home Care paid kickbacks and bribes to nurses and patient recruiters so that they would place patients with LTC and Professional Home Care. LTC and Professional Home Care would then fraudulently bill Medicare for home health services that were not medically necessary or were never provided. Cooperating Witnesses have explained that LTC and Professional Home Care

billed primarily for diabetic skilled nursing care and/or physical therapy for the recruited beneficiaries.

29. Patient recruiters would, in turn, pay the Medicare beneficiaries kickbacks for agreeing to be placed at LTC and Professional Home Care. According to the Cooperating Witnesses, recruited beneficiaries accepted these kickbacks in return for allowing LTC and Professional Home Care to fraudulently bill the Medicare program for home health services that were not medically necessary and/or not provided. I have confirmed in the Medicare claims data that LTC and/or Professional Home Care did, in fact, submit claims for the majority of beneficiaries identified by the Cooperating Witnesses.

30. Several Cooperating Witnesses stated that it was common knowledge that Luis owned and operated both LTC and Professional Home Care, and the patients were often interchanged between both companies. Luis and Ruiz were observed by various Cooperating Witnesses giving instructions to employees at LTC and Professional Home Care.

31. According to various Cooperating Witnesses, employees at LTC and Professional Home Care caused patient files to be falsified in order to make it appear that Medicare beneficiaries qualified for and received home health services that in reality were not medically necessary and/or not provided.

32. The information gathered during this investigation, including the information provided by the Cooperating Witnesses, which is detailed further below, indicates that virtually all of LTC's and Professional Home Care's billings to Medicare during the relevant time periods were

fraudulent, in that they were tainted by unlawful kickbacks, not medically necessary, and/or never provided.

CW1 – Nurse

33. CW1 worked as a nurse for LTC and Professional Home Care from in or about 2007 through in or about 2009.

34. CW1 explained to law enforcement that he/she was hired to provide skilled nursing services. But, soon after starting work, CW1 learned that the patients at LTC and Professional Home Care were being paid and did not qualify for the home health services being billed to the Medicare program. CW1 stated that LTC and Professional Home Care sought out purportedly diabetic beneficiaries because of the ability to fraudulently bill the Medicare program for skilled nursing visits two or three times per day per beneficiary, which in some cases resulted in fraudulent Medicare billings and payments exceeding $14,000 per 60-day period for each beneficiary.

35. CW1 stated that his/her nursing notes indicated that he/she visited the patients two or three times a day, but, in reality, CW1 almost never visited the patients or provided services. CW1 would have the patients sign visit logs for visits that were never provided.

CW2 – Patient Recruiter/Nurse

36. CW2 worked as a nurse and patient recruiter for LTC and Professional Home Care from in or about 2006 through in or about 2009.

37. CW2 explained to law enforcement that he/she was hired to provide skilled nursing services. But, soon after starting work, CW2 learned that the patients at LTC and Professional Home Care were being paid and did not

qualify for the home health services being billed to the Medicare program. CW2 stated that LTC and Professional Home Care sought out purportedly diabetic beneficiaries because of the ability to fraudulently bill the Medicare program for skilled nursing visits two or three times per day per beneficiary, which in some cases resulted in fraudulent Medicare billings and payments exceeding $14,000 per 60-day period for each beneficiary.

38. CW2 stated that his/her nursing notes indicated that he/she visited the patients two or three times a day, but, in reality, he/she almost never visited the patients or provided services. CW2 would have the patients sign visit logs for visits that were never provided.

39. CW2 stated he/she worked with an employee from LTC's quality control department to prepare the notes. CW2 explained that he/she paid this employee $2 per patient note which the LTC employee completed on CW2's behalf. CW2 would provide the LTC employee with weekly blood sugar logs and the LTC employee would complete the notes and add symptoms. CW2 stated that the LTC employee falsified these nursing notes to match the symptoms on the patient's POCs. CW2 stated that this was done by the LTC employee so that the services appeared legitimate, even though the symptoms did not exist. CW2 explained that he/she had the notes completed in the same manner at Professional Home Care.

40. CW2 explained that eventually he/she began recruiting patients for LTC and Professional Home Care. CW2 was paid a kickback of approximately $1300 per patient per month for each patient prescribed skilled nursing visits. CW2 was paid a kickback of approximately $600 per cycle for each patient prescribed physical

therapy. CW2 was paid kickbacks for each patient he/she recruited for LTC by Acevedo and for Professional Home Care by Ruiz.

CW3 – Patient Recruiter/Nurse

41. CW3 worked as a nurse and patient recruiter for LTC and Professional Home Care from in or about 2006 through in or about 2009.

42. CW3 explained to law enforcement that he/she was hired to provide skilled nursing services. But, soon after starting work, CW3 learned that the patients at LTC and Professional Home Care were being paid and did not qualify for the home health services being billed to the Medicare program. CW3 stated that LTC and Professional Home Care sought out purportedly diabetic beneficiaries because of the ability to fraudulently bill the Medicare program for skilled nursing visits two or three times per day per beneficiary, which in some cases resulted in fraudulent Medicare billings and payments exceeding $14,000 per 60-day period for each beneficiary.

43. CW3 stated that his/her nursing notes indicated that he/she visited the patients two or three times a day, but, in reality, he/she almost never visited the patients or provided services. CW3 would have the patients sign visit logs for visits that were never provided.

44. CW3 also worked as the Director of Nursing ("DON") at Professional Home Care from May to October 2007, and then from April 2008 through July 2009. CW3 referred patients to Professional Home Care in exchange for $800 per patient per month ($400 of that kickback was to be paid to the patients). CW3 agreed with Ruiz that he/she would receive $1200 per month for patients that

received both skilled nursing and physical therapy services ($700 of that kickback was to be paid to the patients).

CW4 – Patient Recruiter

45. CW4 worked as a patient recruiter for LTC and Professional Home Care. CW4 met directly with Luis, who agreed she would pay CW4 $1600 per patient per cycle for patients prescribed physical therapy and $1500 per patient per month for patients prescribed skilled nursing services. Bank records reflect that LTC paid CW4 $130,000 between October 2007 and July 2009.

46. CW4 and Luis agreed to similar rates for patient referrals to Professional Home Care. Bank records reflect that Professional Home Care has paid CW4 $56,000.

47. CW4 has stated that the patients he/she recruited for LTC and Professional Home Care did not qualify for either skilled nursing care or physical therapy, and that he/she provided false home health aide certificates. In fact, CW4 never provided any home health aide services, but believes Luis asked for this documentation to make it appear that the recruiting kickback checks were legitimate payments for home health aide services.

CW5 – Owner of Medical Clinic

48. CW5 was the owner and operator of a medical clinic that purported to provide prescriptions and POCs for home health care services to Medicare beneficiaries.

49. CW5 met with Luis, who offered to pay CW5 for patient referrals in the amount of $1400 per patient, per cycle for patients prescribed physical therapy and $1500 per patient, per month for patients prescribed skilled nursing services. CW5 declined this offer.

50. CW5 received a call in 2008 from Luis, who requested that doctors employed by the clinic sign false POCs for Luis in exchange for $500 per POC. CW5 declined this offer.

51. A patient recruiter for LTC also brought patients to the clinic in order to receive prescriptions and POCs for these patients. The recruiter explained that LTC paid him kickbacks for each patient he recruited for LTC; these patients did not qualify for the prescribed medical services.

CW6 – Nurse/Patient Recruiter

52. CW6 worked as a nurse at LTC from approximately 2009 through 2010. CW6 was employed purportedly to provide nursing services at LTC to approximately 15-17 patients. However, these patients did not qualify for skilled nursing home health visits, and many were not even diabetic. CW6 stated that he/she visited the patients at LTC approximately 2 to 3 times per week, instead of the 14 times he/she indicated in LTC's records. Instead of providing skilled nursing care, CW6 visited the patients only in order to have the patients sign visit logs for days that CW6 was not there.

53. CW6 stated that he/she subsequently began recruiting his/her own patients and approached Acevedo at LTC and discussed recruiting patients for LTC in exchange for kickbacks. Acevedo told CW6 that LTC in general had grown too large and the amount of patients at LTC looked suspicious. Acevedo explained, however, that she had another home health agency where CW6 could bring his/her recruited patients. Acevedo told CW6 to bring his/her patients to Professional Home Care, and directed CW6 to meet with one of the owners of

Professional Home Care (as listed in its Articles of Incorporation).

54. CW6 met with the owner, who agreed to pay CW6 approximately $1300 per patient per month for patients prescribed skilled nursing services. The owner also agreed to pay CW6 approximately $1000 per patient per physical therapy cycle.

55. CW6 recruited approximately 5-7 patients for Professional Home Care and also worked there as a nurse. CW6 has admitted that the patients he/she recruited at Professional Home Care did not qualify for the services being billed to Medicare, and many were not even diabetic.

56. False documentation for CW6's recruited patients, including home health prescriptions and signed POCs, were received from a particular doctor. CW6 explained that he/she paid the doctor's office administrator cash kickbacks of $200 per POC in exchange for the doctor's signature. This doctor was previously indicted in the District Court for the Southern District of Florida (Case no. 11-CR-20113) for his role in other home health frauds, and subsequently pled guilty for prescribing home health services that were not medically necessary.

CW7 – Patient Recruiter

57. CW7 stated that he/she recruited Medicare beneficiaries and paid them kickbacks to participate in the fraudulent schemes at LTC and Professional Home Care. CW7 agreed with another patient recruiter for LTC to transfer CW7's patients from another home health care agency to LTC in exchange for $1200 per month per patient if the patient was prescribed skilled nursing and $1000 if the patient was prescribed physical therapy. Those

rates were later increased to $1500 per patient after CW7 threatened to leave LTC and transfer his/her patients to another home health agency.

58. CW7 stated that when he/she moved over to LTC, he/she was joined by CW1, who was assigned to act as the nurse for CW7's patients because CW1 was aware that the patients did not in fact need the skilled nursing services that had been prescribed for them. CW7 met directly with his/her patients and agreed to pay them kickbacks.

59. CW7 also recruited a patient for Professional Home Care, for whom he/she was paid $1200 per month.

CW8 – Patient Recruiter

60. CW8 acted as a patient recruiter for Professional Home Care. CW8 recruited a patient and agreed with Ruiz to receive in exchange approximately $1200 per month for the prescribed skilled nursing services and another approximately $800 per cycle for the physical therapy services. CW8 was aware that the patient did not require the medical services that were prescribed for him.

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64. These deposits by Medicare to LTC and Professional Home Care were in payment for the fraudulent claims submitted by LTC and Professional Home Care.

65. Defendants implemented schemes to transfer these Medicare monies to themselves both directly and by using shell companies. Evidence gathered during the government's investigation indicates that Defendant Luis had family members open shell companies, and that Luis would transfer monies to these companies. In addition, a recruiter for LTC opened a shell company that would receive checks directly from LTC, money which the recruiter would then use to pay kickbacks to beneficiaries.

66. Defendants also withdrew substantial amounts of cash from LTC's and Professional Home Care's corporate accounts in order to pay kickbacks in furtherance of their fraudulent schemes.

67. Defendants also used Medicare monies for foreign travel, to pay substantial salaries to themselves, to purchase multiple properties, and to purchase luxury cars.

68. For example, of the monies paid by Medicare, Defendant Sila Luis received approximately $4.49 million; Myriam Acevedo received approximately $1.52 million

(with almost another million going to a company she owned); and Elsa Ruiz received close to $900,000 (she appears to have received more indirectly). As another example, approximately $225,000 of Medicare monies went to Mercedes Benz for luxury automobiles.

69. From at least January 2006 to the present, Defendants have systematically dissipated the vast majority of the funds received from Medicare by writing checks and making transfers from LTC's and Professional Home Care's bank accounts to themselves, other entities they control, and to third parties to pay for kickbacks, real estate and personal luxury items.

70. Although Medicare has paid Defendants, through LTC and Professional Home Care, $45 million since January 2006, the United States has only been able to locate assets totaling a fraction of that amount. Defendants appear to have dissipated tens of millions of dollars in Medicare funds, and unless enjoined will continue to dissipate the proceeds of their Medicare fraud.

71. I have located the following properties owned by Defendants:

Owner	Address	Assessed Value
Sila Gutierrez[1] [fn1: Gutierrez is Defendant Sila Luis's maiden name.]	600 NW 32nd Pl., #207, Miami, FL 33125	$41,990
Sila Luis	600 NW 32nd Pl., # 413, Miami, FL 33125	$39,690
Sila Luis	3401 SW 11th St., 1-B, Miami, FL 33135	$61,190

Sila Gutierrez & Wilfredo Luis	4779 Collins Ave., #2007, Miami Beach, FL 33140	$520,610
Sila Gutierrez & Wilfredo Luis	6055 SW 87th Ave., Miami, FL 33173	$754,624
Sila Luis & Wilfredo Luis	16171 SW 151 Terrace, Miami, FL 33196	$205,870
Sila Luis & Wilfredo Luis	6940 SW 90th St., Miami, FL 33156	$1,208,608
LS Property Holdings, LLC (owned by Sila Luis)	3401 SW 11th St., 2A, Miami, FL 33135	$61,190
LS Property Holdings, LLC (owned by Sila Luis)	1250 West Ave, Apt. 4G, Miami Beach, FL 33139	$72,050
LS Property Holdings, LLC (owned by Sila Luis)	7400 SW 48th St., Miami, FL 33155	$274,010
LS Property Holdings, LLC (owned by Sila Luis)	7174 SW 47th St., #7174, Miami, FL 33155	$214,080
LS Property Holdings, LLC (owned by Sila Luis)	1250 West Ave., Apt. 4D, Miami Beach, FL 33139	$74,510
Myriam Acevedo	3261 SW 140 Avenue, Miami, FL 33175	$210,212

Myriam Acevedo	13458 SW 62 St., #110-Q, Miami, FL 33183	$65,240
Myriam Acevedo	10700 NW 66 St., #206, Miami, FL 33178	$179,982
Myriam Acevedo	2299 SW 27th Ave., Miami, FL 33145 (unit numbers unknown)	$709,396

72. I have located the following accounts owned by Defendants, individually or through LTC or Professional Home Care:

Bank Name	**Account Holder**	**Account Number Ending In**
SunTrust	LTC	x5786
SunTrust	LTC	x0769
Wells Fargo	LTC	x4160
Wachovia	LTC	x8976
SunTrust	LTC	x0536
SunTrust	LTC	x4361
SunTrust	LTC	x0769
SunTrust	LTC	x1740
Bank Atlantic	LTC	x3921
Bank Atlantic	LTC	x6860
Regions Bank	Sila Luis/Wilfredo Luis	x7541
Regions Bank	Sila Luis/Wilfredo Luis	x8199
Regions Bank	Sila Luis/Wilfredo Luis	x8326
Bank of America	Sila Luis	x1826
Bank of America	Sila Luis	x4829

Bank of America	Sila Luis	x4887
Bank of America	Sila Luis	x8884
Bank of America	Sila Luis	x8897
HSBC	Sila Luis	x0408
Bank Atlantic	Sila Luis/Kyusttin A. Abreu	x6251
Bank of America	Sila Luis	x8884
SunTrust	Sila Luis	x0627
SunTrust	Sila Luis	x1348
SunTrust	Sila Luis	x5426
SunTrust	Sila Luis	x0623
Eastern National Finance	Sila Luis	x7406
Eastern National Finance	Sila Luis	x2402
WAMU	Sila Luis	x8534
Bank of America	Sila Luis	x4882
Regions Bank	Sila Luis	x7134
SunTrust	Elsa Ruiz	x5854
Bank of America	Elsa Ruiz	x4805
International Finance	Professional Home Care	x3458
SunTrust	Professional Home Care	x4477
Wachovia	Myriam Acevedo	x1736
Power Financial CU	Myriam Acevedo	x11-31
Regions Bank	Myriam Acevedo	x3568
Regions Bank	Myriam Acevedo	x9652
SunTrust	Myriam Acevedo	x1744
Eagle National Bank	Myriam Acevedo	x1803

CONCLUSION

73. Based upon my experience and training, as well as the information described in this Declaration and otherwise learned in this investigation, I believe that the claims submitted to Medicare by LTC from January 2006 through July 2009, and by Professional Home Care from November 2007 through June 2012, were false and/or fraudulent claims, in that Defendants conspired to submit and submitted false claims to the Medicare program that were tainted by illegal kickback payments; and conspired to submit claims for home health services that were not medically unnecessary and/or not provided. Defendants' conduct has resulted in the Defendants obtaining money of a health care benefit program through the means of a scheme and artifice to defraud, in the sum of approximately **$45 million**.

FURTHER DECLARANT SAYETH NAUGHT.

Pursuant to Title 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and is based upon my personal knowledge this *2nd* day of October, 2012, in Miami, FL.

/s Clint E. Warren
CLINT E. WARREN
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

filed by
/s *Susan Torres*
Susan Torres
AUSA

Case 1:12-cv-23588-PCH Document 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-23588-CIV-HUCK/BANDSTRA

UNITED STATES OF AMERICA

Plaintiff,

v.

FILED UNDER SEAL
(Filed Oct. 3, 2012)

SILA LUIS, ELSA RUIZ, and MYRIAM ACEVEDO,

Defendants.

_____/

TEMPORARY RESTRAINING ORDER

On this *3rd* day of October 2012, at *9:20 a.m.*, upon consideration of Plaintiff United States of America's Motion for Temporary Restraining Order and Preliminary Injunction and Supporting Memorandum of Law, pursuant to 18 U.S.C. § 1345, the Complaint filed by Plaintiff United States of America, and the Declaration of Clint E. Warren, the Court finds that the United States has demonstrated that:

1. the Defendants Sila Luis, Elsa Ruiz, and Myriam Acevedo are violating and unless enjoined will continue to violate 18 U.S.C. § 1349, 18 U.S.C. § 371, and/or 42 U.S.C. § 1320a-7b and have committed and unless enjoined would continue to commit a Federal health care offense through

the submission of false and fraudulent claims to the Medicare program;

2. the Defendants are alienating or disposing of property, and intend to alienate or dispose of property, obtained as a result of a Federal health care offense, property which is traceable to such violation, or property of equivalent value; and

3. the provision of advance notice to the Defendants will likely aggravate the damage that the order seeks to prevent because advance notice will provide the Defendants with the opportunity to transfer, expend, or conceal the remaining property.

Based on the foregoing, the Court hereby concludes as follows:

4. that the requested relief be considered and GRANTED without prior notice to the Defendants; and

5. because the United States' motion is based upon 18 U.S.C. § 1345, which expressly authorizes injunctive relief to protect the public interest, no specific finding of irreparable harm is necessary, no showing of the inadequacy of other remedies at law is necessary, and no balancing of the interests of the parties is required prior to the issuance of a temporary restraining order in this case.

After consideration of the foregoing, it is therefore

ORDERED, ADJUDGED, and DECREED that the Defendants, their respective owners, agents, employees, attorneys, and all persons acting in concert and participation with them, including all banking and other financial institutions at which they do business, and all corporations over which they exercise control, who receive

actual or constructive notice by personal service, by publication, or otherwise, be enjoined as follows:

1. From making or submitting or conspiring to make or submit any claims to the Medicare program or any health care benefit program, as defined in 18 U.S.C. § 24(b), in violation of 18 U.S.C. § 1349, 18 U.S.C. § 371, and/or 42 U.S.C. § 1320a-7b, and from committing any Federal health care offense, as defined in 18 U.S.C. § 24;

2. From alienating, withdrawing, transferring, removing, dissipating, or otherwise disposing of, in any manner, any moneys or sums presently deposited, or held on behalf of any Defendant by any financial institution, trust fund, or other financial entity, public or private, that are proceeds or profits from Defendants' Federal health care offenses or property of an equivalent value of such proceeds or profits, **including but not limited to** the following accounts:

Bank Name	Account Holder	Account Number Ending In
SunTrust	LTC	x5786
SunTrust	LTC	x0769
Wells Fargo	LTC	x4160
Wachovia	LTC	x8976
SunTrust	LTC	x0536
SunTrust	LTC	x4361
SunTrust	LTC	x0769
SunTrust	LTC	x1740
Bank Atlantic	LTC	x3921
Bank Atlantic	LTC	x6860
Regions Bank	Sila Luis/Wilfredo Luis	x7541

Regions Bank	Sila Luis/Wilfredo Luis	x8199
Regions Bank	Sila Luis/Wilfredo Luis	x8326
Bank of America	Sila Luis	x1826
Bank of America	Sila Luis	x4829
Bank of America	Sila Luis	x4887
Bank of America	Sila Luis	x8884
Bank of America	Sila Luis	x8897
HSBC	Sila Luis	x0408
Bank Atlantic	Sila Luis/Kyusttin A. Abreu	x6251
Bank of America	Sila Luis	x8884
SunTrust	Sila Luis	x0627
SunTrust	Sila Luis	x1348
SunTrust	Sila Luis	x5426
SunTrust	Sila Luis	x0623
Eastern National Finance	Sila Luis	x7406
Eastern National Finance	Sila Luis	x2402
WAMU	Sila Luis	x8534
Bank of America	Sila Luis	x4882
Regions Bank	Sila Luis	x7134
SunTrust	Elsa Ruiz	x5854
Bank of America	Elsa Ruiz	x4805
International Finance	Professional Home Care	x3458
SunTrust	Professional Home Care	x4477
Wachovia	Myriam Acevedo	x1736
Power Financial CU	Myriam Acevedo	x11-31
Regions Bank	Myriam Acevedo	x3568
Regions Bank	Myriam Acevedo	x9652

SunTrust	Myriam Acevedo	x1744
Eagle National Bank	Myriam Acevedo	x1803

3. From alienating, withdrawing, transferring, removing, dissipating, or otherwise disposing of, in any manner, assets, real or personal (including, for example, real estate, motor vehicles, boats and watercraft, jewelry, artwork, antiques, household furniture and furnishings, etc.), in which any Defendant has an interest, up to the equivalent value of the proceeds of the Federal health care fraud, **including but not limited to** the following properties:

Owner	Address	Assessed Value
Sila Gutierrez	600 NW 32nd Pl., #207, Miami, FL 33125	$41,990
Sila Luis	600 NW 32nd Pl., # 413, Miami, FL 33125	$39,690
Sila Luis	3401 SW 11th St., 1-B, Miami, FL 33135	$61,190
Sila Gutierrez & Wilfredo Luis	4779 Collins Ave., #2007, Miami Beach, FL 33140	$520,610
Sila Gutierrez & Wilfredo Luis	6055 SW 87th Ave., Miami, FL 33173	$754,624
Sila Luis & Wilfredo Luis	16171 SW 151 Terrace, Miami, FL 33196	$205,870

Sila Luis & Wilfredo Luis	6940 SW 90th St., Miami, FL 33156	$1,208,608
JS Property Holdings, LLC (owned by Sila Luis)	3401 SW 11th St., 2A, Miami, FL 33135	$61,190
JS Property Holdings, LLC (owned by Sila Luis)	1250 West Ave, Apt. 4G, Miami Beach, FL 33139	$72,050
JS Property Holdings, LLC (owned by Sila Luis)	7400 SW 48th St., Miami, FL 33155	$274,010
JS Property Holdings, LLC (owned by Sila Luis)	7174 SW 47th St., #7174, Miami, FL 33155	$214,080
JS Property Holdings, LLC (owned by Sila Luis)	1250 West Ave., Apt. 4D, Miami Beach, FL 33139	$74,510
Myriam Acevedo	3261 SW 140 Avenue, Miami, FL 33175	$210,212
Myriam Acevedo	13458 SW 62 St., #110-Q, Miami, FL 33183	$65,240
Myriam Acevedo	10700 NW 66 St., #206, Miami, FL 33178	$179,982
Myriam Acevedo	2299 SW 27th Ave., Miami, FL 33145	$709,396

IT IS FURTHER ORDERED that Defendants, their respective owners, agents, employees, attorneys, and all

persons acting in concert and participation with them, including all banking and other financial institutions at which they do business, and all corporations over which they exercise control, are ordered:

4. To preserve all business, financial and accounting records, including bank records, that detail any of Defendants' business operations and disposition of any payment that directly or indirectly arose from the payment of money to any Defendant on behalf of the Medicare program;

5. To preserve all medical records, including patient records, that relate to any Defendants' business operations and/or to services for which claims were submitted to the Medicare program;

IT IS FURTHER ORDERED that Defendants, within one calendar week of receiving notice of this Order:

6. Provide to the United States the following:

a. a list of all post office boxes or other locations at which mail addressed to each Defendant is received by or on behalf of each Defendant;

b. a list of all financial institutions, including but not limited to banks and brokerage houses, at which there are now, or have been maintained in the past three years, any savings, checking, money market, investment, retirement, or any other kind of account or other safe deposit box into which money has been deposited in any Defendant's name or in the names of any of their owners, agents, employees, officers, persons acting in concert with them, or any business names under which they operate, together with

the number or other designation of each such account or box;

c. a list of all financial institutions, including but not limited to, banks and brokerage houses, at which there are now, or have been maintained in the past three years, any savings, checking, money market, investment, retirement, or any other kind of account or other safe deposit box into which monies received in response to any of the activities described in the United States' complaint, have been deposited, together with the number of such box or other designation of each such account or box; and

d. the names, addresses, and telephone numbers of any individuals who have received remuneration of any kind for assisting in record-keeping, bookkeeping, accounting, brokering, or financial, investment, or tax advice or consultation for any Defendant in the past three years;

7. Complete a Financial Disclosure Statement form provided by the United States and, on a monthly basis, provide an accounting of their assets in suitable reports detailing their financial conditions.

IT IS FURTHER ORDERED that the United States shall promptly attempt to provide notice of this action and this Order to Defendants by, to the extent necessary, attempting service at last known addresses and by attempting telephone notice via known telephone numbers. Pursuant to 18 U.S.C. § 1345(a)(3) and Rule 65(c) of the Federal Rules of Civil Procedure, Plaintiff United States of America shall not be required to post security for the instant action.

This temporary restraining order shall remain in force until the close of business on the *13th* day of *October*, 2012, or at such later date as may be extended by the Court, or agreed upon by the parties.

The parties shall take notice that this matter shall come before the Court for a preliminary injunction hearing on the *12th* day of *October*, 2012, at *4:00 p.m.*, in accordance with Plaintiff's complaint and motion for injunctive relief. Defendants may request an earlier hearing on the terms of this temporary restraining order in accordance with the terms of Federal Rule of Civil Procedure 65. *The hearing will be held in Courtroom 12-2, 400 N. Miami Avenue, Miami, FL before U.S. District Court Judge Cecila Altogna* [sic].

DONE AND ORDERED at Miami, Florida, this *3rd* day of *October*, 2012.

/s Paul Huck
UNITED STATES DISTRICT JUDGE

cc: Susan Torres, AUSA

Case 1:12-cv-23588-PCH Document 30

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 12-23588-CIV-HUCK/BANDSTRA

UNITED STATES OF AMERICA

Plaintiff,

v.

SILA LUIS, ELSA RUIZ, and
MYRIAM ACEVEDO,

Defendants.

_____/

ORDER GRANTING MOTION TO MODIFY
TEMPORARY RESTRAINING ORDER
(Filed Nov. 5, 2012)

After consideration of Plaintiff United States of America's Motion for Temporary Restraining Order and Preliminary Injunction and Supporting Memorandum of Law, pursuant to 18 U.S.C. § 1345, the Complaint filed by Plaintiff United States of America, and the Declaration of Clint E. Warren, the Court previously entered a Temporary Restraining Order on October 3, 2012 (the "TRO") [DE #11], and extended it by Order dated October 12, 2012 [DE #18]. The United States has now filed an Unopposed Motion to Modify Temporary Restraining Order to correct the listing of Defendants' assets, specifically their bank accounts and real properties. Upon consideration of the Motion and the record in this case, it is hereby

ORDERED and ADJUDGED that the Motion is **GRANTED**. The TRO previously entered by the Court is modified to reflect the following listing of Defendants' bank accounts:

Bank Name	Account Holder	Account Ending In	Amount
Wells Fargo	LTC	x4160	$60,078.97
Bank Atlantic/BB&T	LTC	x3921	$4,143.89
Bank Atlantic/BB&T	LTC	x6860	$2,099.44
Regions Bank	Sila Luis	x7541	$194,338.83
Bank of America	Sila Luis & Wilfredo Luis	x4829	$22,808.87
HSBC	Sila Luis	x9332	$67.10
Bank Atlantic/BB&T	Sila Luis/Kyusttin Abreu	x6251	$2,737.39
JP Morgan Chase	Sila Luis & Wilfredo Luis	x8534	$1,654.56
JP Morgan Chase	Sila Luis & Wilfredo Luis	x7668	$3,324.11
SunTrust Investments	Sila Luis & Wilfredo Luis	x8080	$902.00

City National Bank	Briana Abreu, Sila Luis custodian	x5672	$160,555.00
City National Bank	Brian Abreu, Sila Luis custodian	x5669	$100,521.00
City National Bank	Sila Luis; Lisandra Guerrero	x5040	$22,152.00
City National Bank	LS Property Holdings, LLC	x2171	$45,735.00
Bank of America	Elsa Ruiz	x4805	$44,747.26
Bank of America	FL UTMA account for Madison I. Perez, Elsa T. Perez custodian	x6185	$2,120.90
International Finance	Professional Home Care; Wilfredo Luis	x3458	$78,248.89
International Finance	Professional Home Care; Lourdes Cazola Gutierrez, Wilfredo Luis	x4551	$35,000.00

Wells Fargo	Myriam Acevedo	x3176	$35.61
Power Financial CU	Myriam Acevedo	x2611	$838.37
Power Financial CU	Myriam Acevedo	x2191	$280.96
Regions Bank	Myriam Acevedo	x9652	$1,517.96
Eagle National Bank	Myriam Acevedo	x3715	$1,538.24

The TRO is further modified to reflect the following listing of Defendants' real properties:

Owner	Address	Assessed Value
Sila Gutierrez	600 NW 32nd Pl., #207, Miami, FL 33125	$44,090
Sila Luis	600 NW 32nd Pl., # 413, Miami, FL 33125	$41,670
Sila Luis	3401 SW 11th St., 1-B, Miami, FL 33135	$52,010
Sila Gutierrez & Wilfredo Luis	4779 Collins Ave., #2007, Miami Beach, FL 33140	$520,610
Sila Gutierrez & Wilfredo Luis	6055 SW 87th Ave., Miami, FL 33173	$698,577
Sila Luis & Wilfredo Luis	16171 SW 151 Terrace, Miami, FL 33196	$186,689

Sila Luis & Wilfredo Luis	6940 SW 90th St., Miami, FL 33156	$1,204,289
LS Property Holdings, LLC (owned by Sila Luis)	3401 SW 11th St., 2A, Miami, FL 33135	$52,010
LS Property Holdings, LLC (owned by Sila Luis)	1250 West Ave, Apt. 4G, Miami Beach, FL 33139	$79,255
LS Property Holdings, LLC (owned by Sila Luis)	7400 SW 48th St., Miami, FL 33155	$274,010
LS Property Holdings, LLC (owned by Sila Luis)	7174 SW 47th St., #7174, Miami, FL 33155	$214,080
LS Property Holdings, LLC (owned by Sila Luis)	1250 West Ave., Apt. 4D, Miami Beach, FL 33139	$81,691
LS Property Holdings, LLC (owned by Sila Luis)	2925 Indian Creek Drive, #316, Miami Beach, Florida 33140	$40,030
LS Property Holdings, LLC (owned by Sila Luis)	2925 Indian Creek Drive, #320, Miami Beach, Florida 33140	$40,030

Myriam Acevedo	3261 SW 140 Avenue, Miami, FL 33175	$210,212
Myriam Acevedo	13458 SW 62 St., #110-Q, Miami, FL 33183	$65,240
Myriam Acevedo	2299 SW 27th Ave., Miami, FL 33145	$709,396

IT IS FURTHER ORDERED that, apart from the modifications noted above, the TRO shall remain in effect in every other respect.

DONE AND ORDERED at Miami, Florida, this 5th day of November, 2012.

/s Paul C. Huck
PAUL C. HUCK
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

Case 1:12-cv-23588-PCH Document 66-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 12-23588-CIV-HUCK/BANDSTRA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SILA LUIS, ELSA RUIZ, and
MYRIAM ACEVEDO,

Defendants.

_____/

SUPPLEMENTAL DECLARATION OF SPECIAL AGENT CLINT E.WARREN IN SUPPORT OF THE UNITED STATES' MOTION FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION
(Filed Dec. 27, 2012)

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been assigned in this capacity since August 2004. Since being assigned to the FBI's Miami Field Office, I have been primarily involved in the investigation of health care fraud in the South Florida area. During that time, I have investigated numerous matters relating to alleged frauds against health insurance programs, primarily, the Medicare Program, and have attended numerous health care fraud training programs. Specifically, I have investigated numerous home health agencies engaged in fraud.

2. The statements in this Supplemental Declaration are based upon information I have learned during the investigation of the Defendants and their businesses known as LTC Professional Consultants, Inc. ("LTC") and Professional Home Care Solutions, Inc. ("Professional Home Care"), including, but not limited to, information provided to me by Special Agents of the FBI and Health and Human Services-Office of Inspector General ("HHS-OIG"), public source and business records, bank records, and my experience and background as an FBI Special Agent. This Supplemental Declaration is being submitted for the purpose of supporting the temporary restraining order and preliminary injunction sought by the United States in this matter, and I have not included each and every fact known to me concerning this investigation. The investigation continues, specifically with respect to the tracing of funds received by Defendants from the Medicare program. Additional information obtained thus far in that regard is included below.

DISSIPATION OF ASSETS

3. Defendant Luis transferred monies or caused the transfer of monies received from Medicare to the following family members and companies owned by family members or by other Defendants, including:

W.L.[1] (husband) [fn1: While redaction of names is not required by Rule 5.2 of the Federal Rules of Civil Procedure, only initials of Defendant Luis's family members are included in an abundance of caution. Full names are available.]	$1,471,000

Accurate Staffing (owned by Defendant Myriam Acevedo)	$879,500
Country Walk Pharmacy & Discount (W.L. on board of directors)	$666,671
ER Medical Consultants (owned by Defendant Elsa Ruiz)	$545,030
M.A. (ex-daughter-in-law)	$541,323
L.L. (daughter)	$450,013
1st Class Home Health (owned by A.C., nephew)	$237,895
K.A. (son)	$236,586
J.G. (believed to be family member)	$149,016
L.C. (niece)	$66,036
M.B-G. (niece)	$63,932
E.A. (nephew)	$63,759
G.G. (son-in-law)	$40,390
A.R. (husband of L.C.)	$30,574
S.A. (niece)	$16,140
J.S./J.F.S. (believed to be same person) (sister)	$2,020 / $13,450

Note: Amounts are approximate as tracing analysis is still ongoing. Relationships noted are based on current information. Amounts include monies from both LTC and Professional Home Care.

4. Defendant Luis used Medicare monies for foreign travel. During the time periods at issue, she traveled to Cuba on at least 4 occasions and to Mexico, where she owns several properties and has numerous bank accounts, approximately 31 times. Luis transferred Medicare monies overseas through international wire transfers to Mexico including to her Mexican corporation Corporativo Sila.

Defendant Luis also used Medicare monies to fund brokerage accounts.

5. Numerous pieces of expensive jewelry worth in total over $250,000 were found at Defendant Luis's residence during the execution of a search warrant. Defendant Luis's counsel has informed the United States that more jewelry is in a safety deposit box at City National Bank.

6. The United States has been able to trace Medicare proceeds going into every bank account owned by Defendant Luis and/or her companies listed in the Court's Order Granting Motion to Modify Temporary Restraining Order [DE #30], except for the HSBC account ending in x9332 (containing approximately $67). Financial tracing is still ongoing.

7. The United States has been able to trace Medicare proceeds going into the purchase or maintenance of the following properties owned by Defendant Luis and/or her companies:

Owner	Address	Assessed Value
Sila Luis	600 NW 32nd Place, #413, Miami, FL 33125	$41,670
Sila Gutierrez & Wilfredo Luis	4779 Collins Avenue, #2007, Miami Beach, FL 33140	$520,610
Sila Gutierrez & Wilfredo Luis	6055 SW 87th Avenue, Miami, FL 33173	$698,577

Sila Luis & Wilfredo Luis	6940 SW 90th St., Miami, FL 33156	$1,204,289
LS Property Holdings, LLC (owned by Sila Luis)	7174 SW 47th St., #7174, Miami, FL 33155	$214,080
LS Property Holdings, LLC (owned by Sila Luis)	2925 Indian Creek Drive, #316, Miami Beach, FL 33140	$40,030
LS Property Holdings, LLC (owned by Sila Luis)	2925 Indian Creek Drive, #320, Miami Beach, FL 33140	$40,030

These are all but two of the properties owned by Defendant Luis believed to currently have positive equity. Financial tracing is still ongoing.

FURTHER DECLARANT SAYETH NAUGHT.

Pursuant to Title 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and is based upon my personal knowledge this *27th* day of December, 2012, in Miami, FL.

/s Clint E. Warren
CLINT E. WARREN
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Case 1:12-CV-23588-PCH Document 96-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 12-23588-CIV-HUCK/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

SILA LUIS, ELSA RUIZ, and
MYRIAM ACEVEDO,

Defendants.

_____/

SECOND SUPPLEMENTAL DECLARATION OF SPECIAL AGENT CLINT E.WARREN IN SUPPORT OF THE UNITED STATES' MOTION FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION

(Filed Feb. 1, 2013)

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been assigned in this capacity since August 2004. Since being assigned to the FBI's Miami Field Office, I have been primarily involved in the investigation of health care fraud in the South Florida area. During that time, I have investigated numerous matters relating to alleged frauds against health insurance programs, primarily, the Medicare Program, and have attended numerous health care fraud training programs. Specifically, I have investigated numerous home health agencies engaged in fraud.

2. The statements in this Second Supplemental Declaration are based upon information I have learned during the investigation of the Defendants and their businesses known as LTC Professional Consultants, Inc. ("LTC") and Professional Home Care Solutions, Inc. ("Professional Home Care"), including, but not limited to, information provided to me by Special Agents of the FBI and Health and Human Services-Office of Inspector General ("HHS-OIG"), public source and business records, bank records, and my experience and background as an FBI Special Agent. This Second Supplemental Declaration is being submitted for the purpose of supporting the temporary restraining order and preliminary injunction sought by the United States in this matter, and I have not included each and every fact known to me concerning this investigation. The investigation concerning Defendants and their companies continues.

Patients Identified by Cooperating Witnesses

3. My initial Declaration in this matter identified eight cooperating witnesses ("CW"s) who have provided information regarding Defendants and their companies. These CWs have identified individual beneficiaries who were paid kickbacks in exchange for allowing LTC and/or Professional Home Care to bill Medicare for home health care services on their behalf. These beneficiaries identified by the CWs are not necessarily the only ones the CWs know of who were paid kickbacks, but rather those who the CWs can specifically identify at this time.

4. CW1 identified 2 patients.[1] [fn.1: The patient names have not been included because doing so would likely reveal the identity of the witness. Patient names are available, however, if the Court wishes to review them *in camera*.] The total paid by Medicare to LTC and/or

Professional Home Care Solutions for claims submitted on behalf of these patients is $71,313.40.

5. CW2 identified 19 patients. The total paid by Medicare to LTC and/or Professional Home Care Solutions for claims submitted on behalf of these patients is $1,168,805.96.

6. CW3 identified 2 patients. The total paid by Medicare to LTC and/or Professional Home Care Solutions for claims submitted on behalf of these patients is $81,512.58.

7. CW4 identified 10 patients. The total paid by Medicare to LTC and/or Professional Home Care Solutions for claims submitted on behalf of these patients is $265,216.72.

8. CW5 identified 50 patients. The total paid by Medicare to LTC and/or Professional Home Care Solutions for claims submitted on behalf of these patients is $2,122,893.96.

9. CW6 identified 16 patients. The total paid by Medicare to LTC and/or Professional Home Care Solutions for claims submitted on behalf of these patients is $505,114.76.

10. CW7 identified 3 patients. The total paid by Medicare to LTC and/or Professional Home Care Solutions for claims submitted on behalf of these patients is $113,646.81.

11. CW8 identified 1 patient. The total paid by Medicare to LTC and/or Professional Home Care Solutions for claims submitted on behalf of these patients is $28,049.66.

12. The total amount paid by Medicare to LTC and/or Professional Home Care for patients identified by these eight CWs as having been paid kickbacks is $4,356,553.85.

Medicare Provider Application

13. Defendant Sila Luis signed a Medicare enrollment agreement and made certain certifications in connection therewith, including agreeing to abide by Medicare laws, regulations, and program instructions, including the federal anti-kickback statute. Copies of relevant pages, including those with her signature, are attached hereto as composite Exhibit A.

Information from Additional Cooperating Witness[2]

[fn.2: Redacted interview reports for this witness are being produced to Defendant Luis.]

14. Since the filing of this action, CW9 has provided information to the government concerning this investigation. CW9 held a prominent position at both agencies during the course of the conspiracy.

15. CW9 worked closely with Sila Luis, knew her family, and traveled with her abroad on occasion.

16. Sila Luis directed CW9 to cash checks at a particular bank and to then use the cash to pay recruiters for LTC. CW9 also stated that Sila Luis cashed checks herself, paid kickbacks to patient recruiters, and kept track of the various recruiters and the patients they recruited to LTC.

17. CW9 stated that certain family members of Sila Luis also cashed checks from LTC for the purpose of paying kickbacks.

18. CW9 stated that LTC wanted diabetic patients because Medicare reimbursed the most for them.

19. The patient recruiters for Professional Home Care were the same ones Sila Luis used at LTC. Sila Luis made all the decisions at Professional Home Care.

20. CW 9 said that the majority, which CW9 quantified at about 90%, of patients at both agencies were paid kickbacks in return for allowing the agencies to use their Medicare numbers to bill Medicare for home health services.

Cash Withdrawals Evidencing Kickbacks

21. As I stated in my original Declaration, Defendants withdrew substantial amounts of cash from the companies' corporate accounts, apparently in order to pay kickbacks. This is consistent with the information provided by the Cooperating Witnesses who recruited patients, almost all of whom stated that they were paid kickbacks in cash (only one, CW4, was paid by check). Review of the financial information from just one LTC account at SunTrust Bank (ending in 0536) shows cash withdrawals by Defendants totaling over $1 million from February 2006 through June 2009.

22. Others in addition to Defendants participated in making these large cash withdrawals. Review of the financial information from this same account indicates that on at least two occasions, Defendant Luis and 5-6 others, including co-Defendants and family members of Defendant Luis, visited SunTrust Bank and, within minutes of each other, all cashed checks from an LTC corporate account. Each check was for $10,000 or just below that amount. *See* Exhibit B.[3] [fn.3: The checks themselves are not attached but are being produced to Defendant Luis.]

FURTHER DECLARANT SAYETH NAUGHT.

Pursuant to Title 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and is based upon my personal knowledge this *1st* day of February, 2013, in Miami, FL.

/s/ Clint E. Warren
CLINT E. WARREN
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Simultaneous Cash Withdrawals by Defendants and Family

LTC Acct # (SunTrust)	Payee (relationship to Def.Luis noted)	Date of Check	Check #	$ Amount	Time ck cashed	Date ck cashed
ending in 0536	Miriam Acevedo	11/5/08	309230	10,000.00	11:19:55	11/5/08
ending in 0536	Sila Luis	11/5/08	309231	10,000.00	11:21:58	11/5/08
ending in 0536	Lissandra Luis (daughter)	11/5/08	309232	10,000.00	11:22:13	11/5/08
ending in 0536	Mary Abreu (ex-daughter-in-law)	11/5/08	309233	10,000.00	11:22:29	11/5/08
ending in 0536	Kyusttin Abreu (son)	11/5/08	309234	10,000.00	11:22:45	11/5/08
ending in 0536	Wilfredo Luis (husband)	11/5/08	309235	10,000.00	11:23:00	11/5/08
		TOTAL $		60,000.00		

ending in 0536	Kyusttin Abreu (son)	12/12/08	309749	9,500.00	15:06:45	12/12/08
ending in 0536	Mary Abreu (ex-daughter-in-law)	12/12/08	309750	9,500.00	15:07:13	12/12/08
ending in 0536	Antonio M. Rodriguez (husband of niece)	12/12/08	309751	9,500.00	15:07:27	12/12/08
ending in 0536	Sila Luis	12/12/08	309752	9,300.00	15:07:39	12/12/08
ending in 0536	Miriam Acevedo	12/12/08	309753	9,550.00	15:07:51	12/12/08
ending in 0536	Elsa Ruiz	12/12/08	309754	6,325.00	15:08:05	12/12/08
ending in 0536	Wilfredo Luis (husband)	12/12/08	309755	6,325.00	15:08:29	12/12/08
			TOTAL $	60,000.00		

Case 1:12-CV-23588-PCH Document 135

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE 12-23588-CV-PCH

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

SILA LUIS,

Defendant.

Miami, Florida
February 6, 2013
Wednesday, 9:30 a.m.

Transcript of Probable Cause Hearing
Before the Honorable Paul C. Huck
Senior United States District Judge

Appearances:
For the government:

Susan Torres, A.U.S.A.
United States Attorney's Office
99 N.E. 4th Street, Third Floor
Miami, FL 33132 - 305/961-9331

For the defendant:

Howard Milton Srebnick, Esq.
Scott Srebnick, Esq.
Black Srebnick Kornspan & Stumpf
201 S. Biscayne Boulevard, Ste. 1300
Miami, FL 33131 - 305/371-6421

Reported by:

Robin Marie Dispenzieri, RPR
Official Federal Court Reporter
Wilkie Ferguson Federal Courthouse
400 N. Miami Avenue, Ste. 08S67
Miami, FL 33128 - 305/523-5659

[3] THE COURT: Good morning, everybody. Please be seated. Good morning. We are here on United States of America versus Sila Luis, Elsa Ruiz, and Myriam Acevedo.

May I have appearances first for the government?

MS. TORRES: Good morning, Your Honor. Susan Torres on behalf of the United States. Also with me at counsel table is FBI Special Agent Clint Warren.

MR. SREBNICK: Good morning, Your Honor. Howard Srebnick and Scott Srebnick on behalf of Sila Luis, who is present in court. Also with us at counsel table is Lesley Marin, our paralegal.

THE COURT: There's a couple of preliminary questions to raise now that I've had a chance to look at the cases and the memorandum of law.

Who has the burden of proof and on what issues, Ms. Torres?

MS. TORRES: The government has the burden to come forward and produce evidence sufficient to establish probable cause to believe that one of the offenses specified in Section 1345 has taken place and that there has been dissipation of assets received as proceeds from that criminal activity.

THE COURT: The indictment itself answers the first question.

MS. TORRES: We believe it does, Your Honor, as to the criminal activity and the amount of the loss.

[4] THE COURT: I think it does too.

Mr. Srebnick, let's talk about that. Do you have an argument you want to make?

MR. SREBNICK: Yes. For the reasons that I've stated, both in writing and at our previous hearings, we believe the burden is not satisfied by an ex parte indictment.

We believe that we're entitled, under the due process principle and under the statute that calls for a hearing, to a full-fledged adversarial hearing in which the government bears the burden of proof. We submit the burden of proof should be at the highest level, beyond a reasonable doubt.

THE COURT: I haven't gotten to that yet, but that's different than who has the burden.

I agree with the government. I looked at the Kaley decision and other cases, and I think it's pretty clear that that establishes probable cause, at least. I think probable cause is the standard.

So, with regard to the underlying allegation of criminal activity, I think the issue has been resolved once the indictment is passed by the grand jury.

The second burden to come in to show—what is the second point again?

MS. TORRES: The government also has to show, under 1345, that there has been dissipation of proceeds.

THE COURT: All right. Do you think the defendant has [5] any burden? Let's say you put on a prima facie case.

Mr. Srebnick, do you think you have a burden to show the inability to pay because there are no other assets? That's what U.S. versus Farmer says.

MR. SREBNICK: I certainly don't agree with Farmer, but we can meet the test in any event because we have the financial affidavit of the defendant, which we submitted to the government. I have the original to tender to the Court if the Court would like to accept it at this time.

It shows that the defendant has no other assets. The restraining order reaches up to $45 million worth of her assets, whether they be so-called traceable or substitute assets, and not even the government is contending that she has anywhere near $45 million.

THE COURT: I don't think we're going to be restraining $45 million. My recollection was a couple million dollars; is that right?

MR. SREBNICK: In any event, whatever the amount is, all of the defendant's assets are within the scope of the restraining order. Not all of them have been seized or physically frozen because there are assets in Mexico, which the defendant has disclosed, which are not technically within the hands of the government or the Court, but we

treat them, for purposes of this proceeding, as frozen, and they are not being touched for that reason.

[6] THE COURT: Okay. When the time comes, you can submit that affidavit. Are you going to submit Ms. Luis to cross-examination, the same as the government's witness, Agent Warren, is going to be submitted to cross-examination?

MR. SREBNICK: I would only do that if the Court rules that what she says cannot be used against her for the purposes of any future proceeding, no different than if she was being questioned for purposes of the appointment of counsel.

THE COURT: Have you discussed that with Ms. Torres? Ms. Torres, that seems like a reasonable limitation.

MS. TORRES: Your Honor, we have discussed this issue with Mr. Srebnick. We have told him that we are not ready to provide what would effectively be immunity to the defendant.

My understanding was that Mr. Srebnick was going to file something on that issue should he choose to pursue it. We have not seen that as of this time.

THE COURT: I'm inclined to let her testify and rule that testimony from this proceeding cannot be used against her in another proceeding.

MS. TORRES: Your Honor, may I address the burden issue on this point further? The only burden that the government has, under 1345, is to show that assets obtained as a result of the criminal activity were dissipated.

We have done that extensively in this case through information showing where the Medicare money went, how

it was [7] spent, how it was transferred abroad, transferred to family members, et cetera. There is no further burden for the government on that point.

To the extent that the defendant argues that the Court should exercise discretion to release certain funds for the defense of the criminal case, there, as the Court has indicated, it would be her burden to show she has no other assets.

That would only be for the purpose of the Court exercising its discretion to release some funds. Our position that we have briefed extensively is that there is no law requiring the Court to do that.

THE COURT: I'll tell you what, when the government finishes with its case, before Mr. Srebnick decides whether to put his client on or not, I'll make some rulings so we can understand.

It's my view that even if she shows that there are no assets available, I still may rule in favor of the government, in which case it's not necessary for Mr. Srebnick to put on his client. We'll cross that bridge when we get to it.

I'm reading Kaley. It struck me—in that case, the majority opinion in Kaley, authored by Judge Marcus, indicated that probable cause was the standard in that the indictment could not be challenged in any way, that that established the underlying criminal activity, and that a hearing was required [7] to establish the nexus between the criminal activity and the assets that are being sought to be frozen.

Do we agree that's the holding?

MR. SREBNICK: I agree that is the holding of Kaley.

MS. TORRES: That is what Kaley held, yes, Your Honor.

THE COURT: Let me pose a hypothetical to you. Kaley involved theft of a truck or some such things, some assets. What if Kaley involved Medicare fraud? What do you think the result would have been with regard to having a hearing to show or to establish a nexus between the fraud and assets in view of the fact that there is a substitute property provision in 1345?

MS. TORRES: Well, in a criminal proceeding, even if the activity is Medicare fraud, I believe the result would have been the same. Under a criminal case, the defendant would be entitled to a pre-trial hearing regarding that issue, the nexus, the traceability of the assets that were restrained.

However, Kaley relied on the forfeiture statutes to reach that conclusion. In this case, of course, 1345 allows for freezing of assets of equivalent value. The forfeiture statutes do not. That is the one distinction between this case and Kaley.

THE COURT: I know that. That's why I raised the hypothetical. What would have been the result?

MS. TORRES: In a criminal context, the result would have been the same. The defendant could have sought such a [9] hearing on traceability. In the context under 1345, that is not the case because the statute allows for freezing of what's called substitute assets.

THE COURT: That occurred to me. Mr. Srebnick, do you want to comment on that? It seems to me, had they been talking about Medicare fraud, a proceeding as we have here under 1345, that there wouldn't be the obligation to take the step of having a hearing just to establish the nexus between the criminal history and the assets that were frozen, because substitute assets were being treated the same as tangent assets.

MR. SREBNICK: In Kaley, as I understand the reach of Judge Marcus's decision, the whole point of the hearing in Kaley that Judge Marcus does authorize is to make sure that substitute assets are not being frozen because Title 21 853 does not authorize the restraint of substitute assets.

It seems to me that was the point of Judge Marcus's limited hearing, to make sure that only assets traceable to the indictment are the ones frozen.

THE COURT: I think that's true, but the crime was not Medicare fraud or bank fraud. It was brought under a different statute, under the criminal forfeiture statute, which requires a nexus.

Based on my reading of 1345, it doesn't seem there's a requirement to prove the nexus. All you have to prove is the [10] criminal activity generated X number of dollars, and then the government would be entitled to freeze any assets up to that amount.

MR. SREBNICK: That's what the government is trying to do in this civil proceeding before Your Honor. Had the government brought this exact same request for a restraining order in front of Judge Cooke in the criminal case and not proceeded under 1345, the government would not be able to restrain substitute assets. They could not have Judge Cooke restrain them.

THE COURT: Then Kaley would fit perfectly on that set of facts. But we're not before Judge Cooke, and it's a civil action brought under 1345, which does not require, it seems to me, a nexus between the criminal activity and tainted assets.

MR. SREBNICK: I understand that to be the government's view of the statute. I made arguments as to why the statute should not be so construed in my written

pleadings. We've discussed it before, but I do understand that to be the government's view.

THE COURT: It's my view.

Refresh my recollection. You say 1345 does not provide for the substitution of substitute assets in place of tainted assets when tainted assets are not available?

MR. SREBNICK: 1345 does allow the government to restrain assets of equivalent value. My view, as expressed in [11] the written pleading, is that the point of that is to make sure there's no dissipation of assets and that the government should not be able to seize those assets needed to retain counsel of choice.

The statute can be construed, given all the cases we cited, that it was never intended by Congress to reach substitute assets needed to defend the case.

THE COURT: Let me parse that out. You added something. I haven't gotten to any Constitutional right to counsel of choice or whatever it might be.

It seems to me that 1345 is pretty clear. You don't have to prove a nexus between the criminal activity and the assets which are being frozen.

MR. SREBNICK: Yes, that's the way it reads, yes.

THE COURT: So why do we need anything further? Once the government establishes that there is criminal activity in the nature of Medicare fraud, and that criminal activity generated, let's just pick a number out of the air, $40 million, the assets that are available and frozen are, let's say, $2 million, why does the government have to do anything further than that?

MR. SREBNICK: Under the statutory construction Your Honor has just indicated, the government would have

nothing further to do. You, therefore, would be overruling all of our objections and so holding.

[12] THE COURT: I think that's the law. That's the way I read the statute. I think it's pretty clear actually. Congressional intent, I think, is pretty clear, to cover exactly this type of situation that we have right here.

I'm not dealing yet with the right to counsel of choice. I'm just dealing with whether the government has fulfilled all of its obligation under 1345 to continue the freeze as a general proposition.

It's my view, after reading all the cases and reading your memoranda, that just by showing the indictment, the fact that the indictment includes an amount of proceeds of fraud, and assuming the government shows that there are assets that were frozen less than that amount, that that's all it has to do.

Then the burden would shift to you to convince the Court that, in balancing all the various interests, the Congressional intent that the government be protected in acquiring and freezing as many assets as possible pre criminal trial versus the client's right to counsel of her choice, I have to balance that out. I think that's where we are.

However, since we're here and everybody is prepared, what I suggest we do is go ahead and put on your evidence, both sides. We'll listen to the evidence, and then I'll make my ruling. I just wanted to give you some preliminary thoughts as to how I view all the cases that have been thrown at me. It [13] seems to me pretty clear.

So, Ms. Torres, are you prepared to move forward?

MS. TORRES: Your Honor, we are ready to proceed with the testimony of Special Agent Warren. His three declarations are in the record. I think the Court had

previously decided to credit those declarations as his direct testimony.

THE COURT: I've got them right here. I note there is, in the criminal forfeiture statute 21853, there's a rebuttal presumption that the assets involved in the attempt of the government to freeze those assets, that if the government shows that the assets were acquired during the period of criminal activity, and there's no other likely explanation for the obtaining of those assets, that there's a rebuttable presumption that they're tainted assets.

Would that apply here? I don't see it in 1345, but it is in 21 Section 553.

MS. TORRES: I think that's not in 1345 because the statute allows for the restraint of or the freezing of assets of equivalent value. Therefore, there doesn't need to be an analysis as to whether something is traceable or not.

THE COURT: Good point. We'll proceed with cross-examination. Is there anything else you want to do besides what you got in the declarations?

MS. TORRES: No, Your Honor.

THE COURT: Swear the witness.

[14] COURT REPORTER: Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth so help you God?

THE WITNESS: I do.

COURT REPORTER: Please state your full name and spell your last name.

THE WITNESS: Clint Warren, W-a-r-r-e-n.

THE COURT: Mr. Warren, would you state your professional occupation.

THE WITNESS: I am an agent with the FBI in Miami.

THE COURT: You have submitted three declarations in this case, the United States of America versus Luis, Ruiz, and Acevedo.

THE WITNESS: Yes.

THE COURT: If you were asked questions about the contents of those affidavits, would your answers be such that it would adopt the information contained in those three affidavits?

THE WITNESS: Yes.

THE COURT: Mr. Srebnick, you may proceed with the cross-examination.

CLINT WARREN, GOVERNMENT'S WITNESS, SWORN

CROSS EXAMINATION

BY MR. SREBNICK:

Good morning, Agent Warren.

[15] A. Good morning.

Q. Agent Warren, the conspiracy that is alleged in the indictment begins in 2006?

A. Yes.

Q. According to the indictment, there was a series of kickbacks that were alleged to have occurred?

A. Yes.

Q. As part of your declaration, you identified up to nine cooperating witnesses?

A. Yes.

Q. None of them have been identified by name for us, correct?

A. Not at this time.

Q. Correct?

A. Correct.

Q. I'd like to go through the dates regarding each of those cooperating witnesses so that we understand where we're at. The declaration indicates that those cooperating witnesses indicate or have told the government that kickbacks were being paid in connection with LTC and Professional to recruit patients. That's the essential allegation?

A. Yes.

Q. Do you have documents in front of you that will help you answer questions, or are you going to need any documents to assist you?

A. I have the three declarations.

[16]

Q. Okay, great.

I would like you to turn your attention to the second supplemental declaration. It's docket entry 96-1.

A. Yes.

Q. I'd ask you also to turn your attention to your first declaration. I think it's docket entry number 5. If you could turn, as to docket entry number 5, if you could turn to the page that addresses confidential witness number 1. I believe that's at page 11 of your declaration.

A. Yes.

Q. Do you see that, at docket entry 5, page 11, paragraph 33, confidential witness number 1 told you that he or she worked as a nurse for LTC and Professional from 2007 to about 2009, correct?

A. Yes.

Q. In your declaration 96-1, page 2, paragraph 4, confidential witness number 1 identified two patients who allegedly were part of the kickback scheme, correct?

A. Correct.

Q. The total amount of money for these patients that Medicare paid, according to your declaration, is $71,313.40?

A. Correct.

Q. Do you know the years when those kickbacks supposedly occurred? Is it fair to say that it would have been sometime between 2007 and 2009?

[17] A. Yes.

Q. I'd like you to turn to page 12 of your declaration at docket entry 5 regarding confidential witness number 2, paragraph 36.

Do you see that confidential witness number 2 worked, according to his or her statement to you all, at either LTC or Professional up until 2009?

A. Yes.

Q. Turning your attention to docket entry 96-1, page 2, paragraph 5, you identify, as part of confidential witness number 2's alleged kickbacks, 19 patients?

A. Yes.

Q. Totaling collections from Medicare of $1,168,805.96?

A. Yes.

Q. The kickback scheme and the collections from Medicare occurred up until 2009 with regard to confidential witness number 2, correct?

A. Yes.

Q. I'd like to turn your attention now to confidential witness number 3.

Your declaration, docket entry number 5, page 13, paragraph 41. This confidential witness number 3 also indicates that he or she worked for LTC and Professional up until 2009, correct?

A. Correct.

[18] Q. We go to your declaration at docket entry number 96-1, page 2, paragraph 6. Confidential witness number 3 identifies two patients for a total of $81,512.58?

A. Yes.

Q. Those revenues were up until 2009, correct?

A. I don't know when the revenues were. That's when the cooperator worked up until.

THE COURT: When you say "up until", was it 2007 through 2009?

THE WITNESS: 2006 through 2009, the conspiracy period.

THE COURT: Okay. Is that true for all of the cooperating witnesses?

THE WITNESS: Yes.

MR. SREBNICK: Judge, so I don't have to labor through this point, the end date for the cooperating witnesses regarding the kickbacks, this would be confidential witnesses 1 through 8, is 2009, correct?

THE WITNESS: Yes. LTC, they stopped operating.

BY MR. SREBNICK:

Q. Your investigation confirms that LTC, one of the two agencies named in the indictment, did not receive any Medicare dollars after 2009 from Medicare, correct?

A. Correct, they were terminated by Medicare.

Q. Now, I would like to show you what's in the record at [19] docket entry 96-2. This would be the forms that

purport to contain Sila Luis's signature, documents that you appended to your declaration, 96-2. Let me know when you're there.

A. The Medicare forms?

Q. Yes, please.

A. Yes.

MR. SREBNICK: Does Your Honor have a copy?

THE COURT: I'm not sure what you're talking about.

MR. SREBNICK: Docket entry 96-2, the Medicare forms that were attached to the declaration of Agent Warren.

THE COURT: The second supplemental?

MR. SREBNICK: Yes.

THE COURT: I have them, but I'm not sure that I can read them.

BY MR. SREBNICK:

Q. Let's look at the dates, is what I want to focus on. This is page 1 of that document number 96-2.

Do you see that it's some sort of certification statement?

A. Yes.

Q. Do you see that it has the name Sila Luis with some signature there?

A. Yes.

Q. You see the date is August 5th, 2003?

A. Yes.

[20] Q. We turn the page to page 2, same date, August 5th, 2003, with a signature date of June 23rd, 2003. Do you see a couple of dates there?

A. Yes.

Q. Everything is 2003, correct?

A. Correct.

Q. We turn to page 3, the signatures also have a date of 2003?

A. Where?

Q. Bottom right of the page, page 3 of docket entry 96-2.

A. Yes.

Q. We turn to page 4, also 2003?

A. Yes.

Q. We turn to page 5, also 2003?

A. Yes.

Q. Page 6, I don't see any date there.

Page 7, correct me if I'm wrong, I don't see any date there.

We go to page 8, it appears to have a date of 2005. It looks like May 16th, 2005.

A. Yes.

Q. We turn to page 9, the date is 2003?

A. Yes.

Q. Page 10, the date is 2004?

A. Yes.

Q. I would like you to turn to page 11. Before we get to page [21] 11, these forms, where did you get them to append to your declaration? What are they?

A. The Medicare enrollment application from Medicare.

Q. So you obtained them through Medicare?

A. Yes, through Safeguard Services, which is an intermediary to Medicare.

Q. These are documents maintained by Medicare and/or Safeguard as part of the enrollment process?

A. Yes.

Q. Now I would like to talk about pages 11 through 14.

What is that document?

A. It was a document as part of the enrollment package. It's labeled "Penalties for falsifying information".

Q. Can we look at pages 11, 12, 13, and 14. Do they appear to be part of the same package of information, 1 of four, 2 of four, 3 of four, and 4 of four? Do you see that on the bottom?

A. Yes.

Q. Is this the first time this type of document is being executed by, it says here, Sila Luis?

A. The first time that this particular document is being executed?

Q. I have not seen any other one like this. That's why I'm asking.

A. Yes, this is the only document of its kind in the application.

[22] Q. Let's look at the date. Do you see on the last page it appears to bear a signature date of January 6th, 2012?

A. Yes.

Q. 2012 is when this investigation against Ms. Luis was already ongoing, correct? The cooperators had already started cooperating against Ms. Luis?

A. Yes, the case was ongoing.

Q. Are you sure this is the document that was submitted to Ms. Luis as part of any kind of enrollment program, or could it have been a document as part of the

investigation to get her to sign a document that could be used against her as evidence?

A. This is a document that was given to us by Medicare, so I'm not really sure who—I mean, she signed it 1/6/2012. They say the effective date was 3/3/2003. So I don't know the history.

Q. Did you get this document, pages 13 through 17, together with all the previous documents in this exhibit as part of a package from Medicare?

A. Yes, it all comes as one package.

Q. Turning now to page 15, 16. I don't see any dates on those documents, we agree?

A. Yes.

Q. The last page, page 17, appears to bear a date of 2004. Do you see that?

A. Yes.

[23] Q. Can we agree, based on what we just reviewed, that the only document that Ms. Luis appears to have signed in connection with this production by Medicare are documents up until 2005 and nothing until 2012?

A. Yes.

Q. Nothing in '06, nothing in '07, nothing in '08, nothing in '09, nothing in 2010, nothing in 2011?

A. That's when they originally signed up with Medicare to get their provider number. If information does not change, then there wouldn't be any further signatures.

Q. Let me ask you, going back to pages 13 through 17, you told us earlier that LTC had been terminated by Medicare sometime around 2009?

A. Yes.

Q. Let's take a look at page 17. Do you see this is a document that relates particularly to LTC? It's at the bottom of the page, second line from the bottom, LTC Professional Consultants, Inc.

A. Page 17?

Q. Page 14 of 17.

A. Yes.

Q. At that time, LTC was not submitting claims to Medicare, right?

A. At which time?

Q. On January 6th, 2012, LTC was not submitting any claims to [24] Medicare?

A. Correct.

Q. LTC had not submitted any claims the year before in 2011, correct?

A. Correct.

Q. Nor in 2010, correct?

A. Correct.

Q. What is the purpose of a document asking for Ms. Luis's signature in 2012 on behalf of LTC that is not submitting to Medicare?

A. I'm not sure. They say the effective date was 3/3/2003. I'm not sure who sent that to her or how she obtained it.

Q. Got it.

Are you certain that neither you nor any of the agents participating in the investigation, are you sure whether any of them had anything to do with this document, pages 13 through 17, being sent to LTC to solicit a signature from Mrs. Luis; are you certain?

A. Yes.

Q. You're certain that none of the agents working on this investigation, you're certain they had nothing to do with it?

A. Yes, to the best of my knowledge, yes.

Q. Now, I understand that the government is objecting to the disclosure of the names of the confidential witnesses, their patients that supposedly were involved in the kickback scheme, [25] so I'm going to ask you these questions understanding that you're not going to reveal the names of the patients, the names of the witnesses, or any of the other sources of the information.

Judge, I understand that to be the case at this time?

THE COURT: Yes, sir.

BY MR. SREBNICK:

Q. I would like to ask you about confidential witness number 1. Now, is it fair to say that confidential witness number 1 is someone who was involved in criminal activity regarding fraudulent submissions of Medicare paperwork?

A. What do you mean by Medicare paperwork?

Q. Let me rephrase it.

Was confidential witness number 1 involved in a fraud before she or he met with the government to disclose information about Sila Luis?

A. She was involved in a previous fraud, yes.

Q. Is it fair to say that confidential witness number 1 was being accused by the government of criminal activity when he or she, I think you said she, when she cooperated with the government?

A. Yes.

Q. Fair to say that cooperating witness number 1 was attempting to obtain benefits from the government by implicating others?

[26] A. CW number 1 was already out of jail at the time she started providing information to us or shortly thereafter.

THE COURT: When you say out of jail, you mean she had been sentenced and she completed her sentence?

THE WITNESS: She had completed her sentence, yes. Now she is out of jail.

BY MR. SREBNICK:

Q. Let's start over, because this is really important.

I don't know the name officially, but I think I know who it is.

THE COURT: Well, you have a gender, that's for sure.

BY MR. SREBNICK:

Q. Do you have a date when confidential witness number 1 first started cooperating and giving information to the government? We have the 302s.

A. Not off the top of my head.

Q. Let me see if I can—

MR. SREBNICK: May I approach to show the witness a document?

THE COURT: You may.

BY MR. SREBNICK:

Q. I'm showing you a redacted 302 that bears your name. Does that look familiar?

A. Yes.

Q. Does that indicate that—I know you haven't had a chance [27] to look at it, but it appears that the date that the interview took place of confidential witness number 1 is sometime in May of 2011?

A. Yes.

Q. Now, cooperating witness number 1 had entered into a plea agreement with the government to cooperate?

A. Yes.

Q. That plea agreement was back in July of 2010?

A. I don't know the exact date, but that sounds approximately right.

MR. SREBNICK: For the record, I'm assuming, and I may be mistaken, Judge, but I'm assuming that cooperating witness number 1—may I say the name? I don't want to do anything that's inappropriate.

THE COURT: Let's have a sidebar on that. I think the cat is out of the bag anyway.

[Proceedings at sidebar follow]:

MS. TORRES: I think the cat's out of the bag with regards to naming this witness, Your Honor. My only concern is putting their name on the record, which will be public.

The government's investigation continues with regard to these individuals and to other agencies that are not even involved in this case. That is my only concern, and that's why we did not want the interview reports to be put into the public record. But the agent knows who the witness is and can answer [28] questions regarding the witness without mentioning the name.

THE COURT: Agreeable?

MR. SREBNICK: I understand.

THE COURT: Should we advise the witness that Mr. Srebnick knows who the name is?

MR. SREBNICK: I believe CW number 2 is [unintelligible].

THE COURT: I assumed that you could put two and two together and figure out who the people were.

Agent, come on up. He knows who CW1 is. He thinks he knows the others. When you get on the stand, we're not going to mention names since it's an ongoing investigation.

MR. SREBNICK: We surmise that CW number 1 is {}.

CW number 2 is {}.

We surmise that CW number 3 is {}.

We are surmising that CW number 4 is {}.

We are surmising that CW number 5 is {}

We have surmised that CW number 6 is {}.

We have surmised that CW number 7 is {}.

We don't know who CW number 8 is. We're not sure.

CW number 9, we surmise is {}.

That's all.

THE COURT: Let me talk to these two, the government.

MS. TORRES: I have no problem confirming the information is correct. Again, I just don't want it in the [29] public transcript.

THE COURT: Mr. Srebnick, could you come back, please.

MS. TORRES: We confirm that is correct. Just don't say the names on the stand.

[Proceedings in open court follow]:

BY MR. SREBNICK:

Q. Okay, with regard to CW number 1, do you recall that she was sentenced January of 2011 to a period of 18 months?

A. That sounds right.

Q. She was granted a self-surrender date later in 2011, so she was still free, not withstanding her sentence, as late as November of 2011?

A. That sounds right.

Q. So, at the time that she met with you starting at—I believe we established the date in May of 2011, she had a sentence hanging over her head, and she was cooperating with you trying to reduce that sentence?

A. She was previously a cooperator, yes.

Q. At the time she was meeting with you, she had the hope that, by implicating others, the government will file a Rule 35 on her behalf?

A. I assume that was CW1's hope, but she had already received a previous benefit.

Q. She was hoping for more benefits by continuing to cooperate, right?

[30] A. I assume.

Q. She had previously met with the government prior to May of 2011, was supposed to have given you all the information she had, but had not implicated Sila Luis prior to May of 2011, correct?

A. She—when we debriefed her, CW number 1 discussed her role as a nurse at LTC.

Q. I think you indicated that, by May of 2011, she had already cooperated with the government, had received a benefit for the cooperation, correct?

A. Correct.

Q. In fact, the government moved for a reduction of CW1's sentence in January of 2011 based on whatever cooperation CW1 had given up to 2011, correct?

A. That sounds right.

Q. January of 2011, she gets the benefit of cooperation. She gets sentenced. She's given a voluntary surrender. Only after she's sentenced to 18 months and is hoping to further reduce her sentence does she first implicate Sila Luis in any criminal activity, correct?

A. Well, that's when we started debriefing her.

Q. Sir, you had already debriefed her to the point where she had earned, by January 2011, a sentencing reduction. Wasn't she supposed to give you all the information she had prior to her sentencing, prior to her getting her first sentencing [31] reduction?

A. She was debriefed on another matter.

Q. Did she ever implicate Sila Luis prior to her sentencing to 18 months?

A. I believe she had said that she worked at this company. At some point, when we started debriefing her more, we debriefed her in further detail.

Q. So the answer is she never implicated Sila Luis until after she got sentenced to 18 months, after she started cooperating, and when she was trying to get a further reduction in her sentence; isn't that true?

A. Again, she was—Q. Isn't that true?

A. She was cooperating in a previous matter, and we found out that she worked at this company, and we continued to debrief her in further detail.

Q. I would like to ask you a few more questions about CW number 1.

According to your declaration, CW number 1 alleges there were kickbacks associated with two patients, right?

A. Yes.

Q. Now, I've looked at the reports that you have provided redacted. Isn't it a fair statement that, other than

naming Sila Luis as somebody who was the owner of the agency, CW number 1 doesn't actually accuse Sila Luis of having been [32] involved in the kickbacks regarding those two patients, correct?

A. She did not interact with Sila Luis. She knew that she was the owner of both agencies, but she did not interact with her.

Q. Now, CW number 1 was employed by, was it LTC?

A. Yes.

Q. She received payments for working at LTC?

A. Yes.

Q. You're able to confirm that she was a paid employee of LTC?

A. Yes.

Q. That's CW number 1, if you could bear with me.

Has CW number 1 ever testified under oath as far as you know?

A. I believe she did. I can't remember.

Q. You can't remember.

A couple more things about CW number 1 just to tie that up. Didn't CW number 1 indicate to you that LTC and Professional, the two agencies that are part of this case, require that the nursing notes be done by hand as opposed to by computer, correct?

A. Correct.

Q. The reason CW number 1 was told to do them by hand was because—well, it was also required that the notes not be done at the offices of LTC or Professional, but be done in the field at the site where the nurse services were given, right?

[33] A. Yes.

Q. This was to ensure that the nurse who's providing service is making contemporaneous notes by hand, not putting them in later at a computer terminal after the fact?

A. Yes, LTC did not want their notes being done inside their office.

Q. Isn't it true that CW number 1, notwithstanding that instruction from the owners of LTC and Professional, CW number 1 was paying somebody to falsify her notes; is that what she told you?

A. Yes, $2 per note.

Q. Isn't it true that CW number 1 was terminated by LTC and Professional over that issue of the note-taking?

A. She was terminated due to an argument over falsifying the notes. Yes, she didn't want to put down a particularly blatant symptom. CW1 had an argument, and ultimately, CW1 was fired.

Q. CW number 1 had already been involved in falsifying notes at other agencies, and she got indicted for that, correct?

A. Yes.

Q. Suddenly, now she's going to become altruistic and she's claiming to you, as part of a debriefing, that the reason she was terminated is because suddenly she didn't want to be involved in falsifying notes; is that her claim to you?

A. No, but it was so blatant that I guess she didn't feel comfortable.

[34] Q. Is it possible, since you weren't there and you're just having to hear what CW1 had to say, that CW1 was fired because he or she—she I should say—was not following the protocol of doing the notes as required by LTC and Professional? Can you rule that out?

A. Rule out?

THE COURT: Do you know one way or the other? I'm not interested in what is possible. I want to know whether he knows or doesn't know.

BY MR. SREBNICK:

Q. Other than what CW number 1 told you, do you have anybody confirming that event other than CW number 1?

A. We have—

Q. The event of why she was fired.

A. CW number 7 confirmed that she was fired over an argument.

Q. Anything beyond what the substance of the argument was?

A. No.

Q. So two people agree there was an argument, CW1, CW7, and CW1 is the only one who tells you that the argument was that CW1 didn't want to falsify notes?

A. No, she didn't say she didn't want to falsify notes. She was uncomfortable with particularly blatant—whatever it was, symptom that needed to be in the notes.

Q. CW1 was unable to identify Sila Luis in a photograph, correct, when you questioned CW1? Do you recall that being [35] documented in one of reports?

A. That she was not able to identify Sila? She identified Sila by name as Sila was the owner.

Q. But when shown a photograph of Sila Luis as part of a photo spread, CW1 could not pick Sila Luis out of a photo spread, correct?

A. I can't remember if we showed CW1 a photo or not of Sila Luis. We showed a lot of photos to a lot of the CWs.

Q. I have your report if that would refresh your recollection.

A. Please.

MR. SREBNICK: May I approach?

THE COURT: Yes, you may. You don't have to ask me anymore.

BY MR. SREBNICK:

Q. Let me show you what appears to be a report by Special Agent Crespo, but it also bears your name. It's dated July 11th, 2012. I highlighted and marked for you to read the paragraph for which I'm surmising the point I'm trying to make.

A. She identified this individual as someone who acted as an owner at both agencies, was unable to say if it was Sila, meaning put the name and the face together.

Q. So tell us what happened. You're interviewing this witness in 2012, which is just a few months ago. You show the witness a photograph. I assume it's a photograph of the lady that's sitting at counsel table?

[36] Do you see the lady there?

A. Yes.

Q. I will stipulate that's Sila Luis for the purpose of this discussion.

Did you show CW1 a picture of Sila Luis?

A. Yes.

Q. Was the witness, CW1, able to identify her?

A. Again, she was able to I.D. that photo as—she recognized her as an owner there, but could not say that

that was her name, Sila. She did not say—she couldn't put the face and the name together.

Q. CW number 1 also told you that patients would be discharged if it was determined that the patient did not meet criteria, right? For example, a patient, I think in October of 2008, was discharged for noncompliance?

A. What do you mean, noncompliance?

Q. The patient didn't meet criteria, either was not homebound or—

A. That may have happened occasionally, yes.

Q. So what CW1 confirmed was that LTC and Professional, when it was determined that the patients did not qualify, would terminate the patient, right?

A. No, a lot of the patients did not qualify.

Q. But when management learned about it, I understand the nurses—the CWs, some of them are nurses, apparently were [37] claiming to bill for services that the nurses weren't rendering, but isn't it true that, from your interview with CW1 and others, there was a system in place at LTC and Professional to make sure that the patients actually qualified for services?

A. I would say that's not accurate. All the CWs who interacted with the patients advised us that a lot of patients did not qualify for services.

Q. I understand that. The question is what was reported back to management.

Let me jump ahead for a moment.

You interviewed CW number 9, right?

A. Yes.

Q. CW number 9 held a management position?

A. Yes.

Q. Did you ask CW number 9, who's now cooperating on this issue—did CW number 9 ever admit to you, tell you that she, as upper level management, was agreeing to provide or bill Medicare for services not rendered or not medically necessary?

A. Not at this time. She identified that the vast majority of the patients received kickbacks. Right there, right off the bat, patients wouldn't qualify.

Q. When I say qualify, meaning needed the services and were provided the services, putting aside kickbacks for the moment. Did you ask CW number 9, upper level management, that question?

A. Not at this time.

[38] Q. What are you waiting for?

MS. TORRES: Your Honor, if I may object. I believe we previously discussed the issue of medical necessity versus kickbacks. My understanding was that the hearing today would be focused on the issue of kickbacks.

THE COURT: I sustain the objection.

BY MR. SREBNICK:

Q. Agent Warren, I would like to turn your attention to CW number 2.

According to your declaration, CW number 2 claims to have been involved with kickbacks regarding 19 patients. Do you see that?

A. Yes.

Q. CW number 2 is another witness who was speaking to you as part of an effort to gain a sentencing reduction, right?

A. Yes, she was involved in the previous matter, yes.

Q. CW number 2 is also somebody who was involved in a fraud, correct?

A. Correct.

Q. A fraud beyond the alleged fraud that's part of this case, LTC and Professional. CW number 2 was involved in frauds independent of LTC and Professional, correct?

A. Yes.

Q. CW number 2 was indicted for committing frauds not involving LTC and Professional?

[39] A. Yes.

Q. CW number 2 entered into a plea agreement in an effort to reduce CW2's sentence, correct?

A. Yes, she entered into a plea agreement.

Q. As part of that plea agreement, CW number 2 eventually spoke to the government and attempted to provide information about LTC and Professional, correct?

A. Yes, she provided information.

Q. Now, CW number 2 actually testified in open court against a doctor in her case, correct?

A. I believe she did, yes.

Q. Okay. Notwithstanding her testimony in front of a jury and a Judge, the jury found that doctor not guilty, correct?

A. Correct.

Q. CW number 2 pointed a finger at another citizen of our community, claimed that that citizen was involved in criminal activity, and the jury rejected her testimony, correct?

A. I wouldn't say they rejected her testimony. They made that decision.

Q. Actually, they rejected her testimony as corroborated by others, correct? She wasn't the only witness who testified against that doctor, right?

A. That's correct.

Q. Is it fair to say that at least one jury of our community came to the conclusion and rendered an opinion that she's not a [40] truthful person?

A. I wouldn't say that. I don't know what their position was on what issue or how they were thinking.

Q. Now, CW number 2 was also somebody who confirmed that LTC and Professional required that the notes made by nurses be made off site, that the nurses aren't supposed to wait to come back to the office to prepare notes, correct?

A. Yes.

Q. Isn't it true that CW2 admitted to you that she would have to sneak around and do notes in the parking lot because management would not have approved CW2 doing the notes at the office?

A. She paid two employees at LTC $2 per note to do the notes, to falsify them. They would meet in the parking lot to exchange the notes.

Q. All of this was done in an effort to conceal it from management, correct?

A. I think management didn't want to know about it. Management didn't want notes being conducted in the office because the whole scheme is set up to be compartmentalized.

Q. Is this what you're surmising, or is this what the witness told you?

A. No, no, this is what I'm surmising.

Q. The witness simply told you that management prohibited these nurses from waiting to come to the office to do the [41] notes, right?

A. Yes.

Q. And these nurses would sneak around and figure out a way, either paying other people or what have you, to create notes against company policy without the knowledge of management, without the knowledge of Sila Luis, correct?

A. Well, the—Q. Correct?

A. Again, they didn't want the notes being conducted in the office. So the QA Department is the one who assisted with helping to falsify these notes and making sure that the POC matched the nursing notes.

Q. The nurses were actually, essentially, bribing some low level employee at LTC or Professional to help do these notes against company policy, correct?

A. They were employees of the QA Department.

Q. Isn't it true that CW number 2 did not implicate Sila Luis in the kickback issues that you've described? Actually, according to the report, CW number 2 implicated—let me just see if I can say the name.

According to your report, it was Elsa Ruiz who CW number 2 implicated, not Sila Luis, right?

A. Well, Elsa Ruiz paid CW2 her kickbacks. CW2's patients—she was a nurse for another patient recruiter that had the relationship with Sila Luis.

[42] Q. I'm not sure what you just said.

My question is the kickbacks that are allegedly being paid—I think it's 19 patients that are at issue?

A. Yes.

Q. According to your reports, the people involved in that kickback arrangement, according to CW number 2, is CW2 and Elsa Ruiz, right?

A. Correct. Again, CW number 2 saw the patients of a patient recruiter who she had to pay $300 to that recruiter to be assigned that group of patients. That patient recruiter was friends with Sila Luis and was paid kickbacks for those patients.

Q. Okay. This recruiter, is this somebody who's cooperating with the government? Because I'm not sure who you're talking about.

A. Yes.

Q. So CW2 and an unnamed recruiter, cooperator, have we been provided the reports of that so-called recruiter or have any information about that recruiter?

A. I don't believe so.

Q. What you're reporting to the Court now, is this information that came from CW2 or from this cooperating recruiter?

A. It's information that came from both.

Q. So you've interviewed both?

A. Yes.

[43] Q. I don't have those reports, so I'm not in a position to address that other person at this time.

I can address CW2. It appears, based on your reports, that CW2 has told you that the kickback scheme that she was involved in involved her and Elsa Ruiz; isn't that a fair statement?

A. Yes, Elsa paid her kickbacks.

Q. I think you said that CW2 described for you her perception of a relationship between Sila Luis and this cooperating recruiter, right?

A. Yes.

Q. But was not a witness or personally observed any financial activity between this recruiter and Sila Luis?

A. Not to my knowledge. They had the relationship, and this recruiter was paid by Sila for these patients.

Q. That's hearsay on the part of A. That's what CW2 told us.

Q. Told you what this unnamed recruiter told her?

A. Yes.

Q. Did she, CW2, observe these so-called kickbacks?

A. She paid her own patients, obviously.

Q. Forgive me.

Did CW2 observe, according to what she told you, Sila Luis paying this recruiter, observe with her eyes?

A. I don't know. I don't think so. I don't know.

[44] Q. Now, CW2 was a nurse?

A. Yes.

Q. Worked for—was it LTC?

A. Yes, LTC and Professional.

Q. She was an employee of LTC?

A. Yes.

Q. Was she also an employee of Professional?

A. Yes.

Q. Two of the patients that CW2 was supposed to be servicing were her own parents, correct?

A. Yes.

Q. It turns out she was using her own parents as part of some effort to bill Medicare through LTC or Professional, right?

A. She used her parents in the scheme, yes.

Q. I don't know who this patient recruiter is, but is that recruiter also somebody who was either indicted or entered into a plea agreement and has motive to implicate others in order to benefit him or herself as part of a cooperation deal?

A. Not at this time.

Q. Hasn't been indicted yet?

A. Not at this time.

Q. This person met with you as part of a proffer session?

A. Yes.

Q. For, like, cooperating in the hopes of not getting indicted kind of thing?

[45] A. I guess that would be her hope, but obviously, the government does not make any promises.

Q. Sometimes you do, but not in this case, right?

A. No.

Q. I'd like to ask you some questions now about CW number 3. CW number 3, according to your declaration at docket entry 96-1, page 2, paragraph 6, identifies two patients in the kickback scheme.

A. Yes.

Q. Okay. CW number 2 was also a nurse and, in fact, had even a little bit of a higher position, like a Director of Nursing at LTC?

A. At Professional.

Q. At Professional. She was a nurse at LTC?

A. Yes.

Q. She was employed at those locations until—was it 2009?

A. Yes.

Q. To get to the bottom line, isn't it fair to say, in all of the interviews you've had with CW number 3, she did not indicate any contact with Sila Luis regarding kickbacks?

A. She knew Sila Luis was the owner, but no, not regarding kickbacks.

Q. So I'm correct to say that, in all the interviews of CW3, she does not implicate Sila Luis directly in a kickback scheme, correct?

[46] A. It was Elsa Ruiz who paid her the kickbacks.

Q. So CW3 implicates Elsa Ruiz, who is a co-defendant in this case, in the kickback scheme?

A. Yes.

Q. Now, I have a redacted report, and it appeared originally that—I don't see the names of the patients, of course, in the reports you've given us, but it does indicate that there were three patients, names unknown, that she spoke of, but your declaration only identifies two at this time.

A. Yes.

Q. Did it turn out that CW3 named a patient that, in fact, was not actually a patient of LTC or Professional?

A. I believe, when I ran the Medicare data, that patient was not billed. It was either that patient was not billed or that patient was only billed for a RAP payment.

They originally submitted a bill for that patient, but there was no final bill. Either he was discharged or somehow he or she left.

Q. Even though CW3 claimed there were three patients involved in the kickbacks, it turned out that your independent investigation revealed that at least one of them had never been billed by LTC or Professional or was discharged or something that led to the conclusion that Medicare did not pay LTC or Professional for that third patient, correct?

A. Correct, just the two patients.

[47] Q. Now, the Director of Nursing, as a nurse, she must have had contact with dozens and dozens, perhaps hundreds of patients, correct?

A. Not necessarily. She had her group of patients that she saw as a nurse, and then she performed the other duties in the office.

Q. How many patients did CW3 either service or supervise?

A. She had her two patients, and she was in the office as the DON overseeing mainly the paperwork and running that aspect.

Q. Is CW3 also somebody who was indicted in a separate case involving other agencies, not LTC or Professional?

A. Yes.

Q. Like the other two witnesses that precede her, CW3 cooperated with the government in an effort to reduce her sentencing exposure, correct?

A. Yes.

Q. She was, indeed, given two Rule 35s, right?

A. I believe so, yes.

Q. So she started cooperating and then decided to continue cooperating in order to further reduce her sentence, right?

A. What do you mean? She cooperated the whole way through.

Q. Right, but she didn't get one Rule 35 motion. She actually has gotten two already, right?

A. Yes.

Q. So the government, what, held one back to hold that over [48] her head, or how did that work?

A. No. Her continued cooperation—it was the prosecutor and the Judge's decision to give her a Rule 35.

Q. Do you know if CW3 ever testified under oath?

A. I don't think so.

Q. Now, before I move to CW4, any of the statements that CW1, 2, or 3 have given the government about LTC, Professional, or Sila Luis, have any of them been under oath?

A. Have any of them what?

Q. Been under oath?

A. No, but they know that, in their cooperation with the government, if they do not tell the truth, there's consequences, obviously, for not telling the truth.

Q. And if they don't implicate other people, the consequence is they don't get a Rule 35, right?

A. Well, if they tell the truth and they're cooperating, then they may or may not receive a benefit. It's out of my hands.

Q. I'd like to ask you now about CW number 4.

According to your declaration, docket entry 96-1, CW number 4 identified ten patients, correct?

A. Yes, that's correct.

Q. Now, CW number 4 actually incorporated a staffing agency, correct?

A. No, he had a company.

Q. I'm sorry?

[49] A. He had a company.

Q. He had a corporation?

A. He had a corporation.

Q. And he would bill either LTC or Professional. Do you know which one?

A. No, he did not bill them.

Q. Was he paid through that corporation by LTC or Professional?

A. Yes.

Q. Now, CW number 4 was also indicted for healthcare fraud, right?

A. Yes.

Q. Healthcare fraud that CW4 committed independent of LTC and Professional, correct?

A. Yes.

Q. When CW number 4 was arrested, the government sought his pre-trial detention based on the government's assessment that he couldn't be trusted to return to Court as he was supposed to promise as part of his bail; isn't that true?

A. They sought pre-trial detention, yes.

Q. And argued he couldn't be trusted to comply with Court orders to return to Court, correct?

A. I'm not sure what they argued. I wasn't a part of that matter.

Q. But you know the government sought pre-trial detention and [50] argued he was a risk of flight?

A. More than likely, yes.

Q. And you know what that means, right?

A. Yes.

Q. You know that the government's position, as to CW4, was that there was a concern that the government had that he couldn't be trusted to return to Court. You know that, right?

A. It's always a concern.

Q. This CW number 4 entered into a plea agreement. As part of his plea agreement, he's trying to reduce his or her sentencing exposure by implicating others, right?

A. Yes, he entered into a plea, yes.

Q. Now, as to CW4, didn't CW number 4 confirm that patients at LTC and Professional, many of them, indeed, were homebound and did qualify for services?

A. He said the vast majority were not homebound. I believe he said there may have been a few that he thought were homebound, but all of his patients were paid kickbacks.

Q. Didn't he say that LTC was strict about who LTC qualified for patients?

A. He said they were more strict than other agencies.

Q. Isn't it true that he said that he did not see Sila Luis very often?

A. He met with Sila Luis initially. They discussed the kickback rates. After that, yes, he did not see her that [51] often. He went to the office, received his checks.

Q. Who did he claim to receive his checks from?

A. Somebody in the office, either Elsa or another office employee. The checks would be there already waiting.

Q. One more point about LTC and Professional. Didn't he tell the government that once a patient was determined

not to qualify for home care, LTC and Professional did not try again to make that patient qualify as other agencies tried to do?

A. Sometimes he said they would, and a lot of times they would not.

Q. I'm looking at a report of Kathryn Batt, B-a-t-t. Is she another agent?

A. Yes.

Q. Did you review her report as part of your preparation for this case?

A. Yes.

Q. She reports having interviewed CW number 4, and she documents, quote, "At LTC and Professional, once the patient did not qualify for home care, they did not try again. They did not send out another nurse." A. Yes.

Q. What that means, for those of us that are new to this, some agencies try to fit a square peg in a round hole. They try to make the patient qualify, but that was not the protocol at LTC and Professional. That's what CW4 told Agent Batt?

[52] A. They had plenty of patients. They didn't need to force the issue, I guess, is what he's trying to tell us.

Q. How many times did you personally interview CW number 4? Just once, because I only have one report with your name on it.

A. Three times.

Q. Okay, now I see. You authored one report, but you were present for other interviews?

A. Yes.

Q. Got it.

So, to summarize CW4, he claims he discussed a kickback arrangement with Sila Luis. That's what he claims, but in fact, isn't it true that he admits that neither Sila Luis—excuse me, he admits that Sila Luis did not pay him, correct?

A. You mean physically hand him a check?

Q. Correct.

A. Correct, but some of the checks were signed by Sila Luis.

Q. And the checks were made payable to a corporation?

A. Yes.

Q. Now, was that corporation—did that corporation have a license to provide home healthcare?

A. Not to my knowledge.

Q. Have you investigated that?

A. That they had a license?

Q. Yes, that CW4 was holding himself out to be in home health. [53] He, himself, was a certified home health aid; was he not?

A. Yes, under a guise of a home health aid. He's a recruiter under the guise of a home health aid, yes.

Q. When you say "under the guise," he was actually licensed by the State of Florida, right?

A. I don't know if he was licensed by the State of Florida, but yes, he was a home health aid.

Q. He was licensed to do that service, correct?

A. Again, I'm not sure if he was licensed or not, but he was a home health aid.

Q. He incorporated some company and at least held himself out to be someone who provided home health services to patients, correct?

A. Well, he never provided home health services to patients.

Q. Didn't he give you a whole background about how he worked as a home health aid. He took care of patients. He drove to see doctors. It was in your report.

A. That was a previous investigation. That's another investigation, not the LTC matter.

Q. That's who he held himself out to be to the public. As far as the public could see, he was a real home health aid providing real services to patients, right?

A. Not for LTC.

Q. I know that's what he's telling you now, but your investigation reveals that, indeed, he had held himself out to [54] be such a person and, indeed, he admits that he did provide real services to patients when he started out, right?

A. In the very beginning, yes.

Q. So at the time that he has a relationship with LTC and Professional, he had already been involved in the home health business providing home health services for patients, right?

A. He was also recruiting patients for other agencies also.

Q. I understand that that he committed criminal activity, that he was involved in fraud involving other agencies, but he was representing himself to be, and indeed was in fact, a home health aid qualified to provide those services to patients?

A. He held himself out to be a home held aid. LTC were very strict about wanting to see that documentation because he was receiving such high dollar value of checks that it was a way to help disguise that he was a patient recruiter.

Q. Did you conduct an investigation of CW number 4? Were you involved in that investigation?

A. No, I was not.

Q. Do you know that CW number 4 was married and that his wife was also a home health aid? Do you know that one way or the other?

A. Yes.

Q. Do you know if CW number 4 also employed a third person as a home health aid?

A. I don't remember. Possibly.

[55] Q. And that these three people were holding themselves out to have a business that provided home health services and indeed were qualified, had they wanted to do it right, to provide home health services?

A. Yes, but in fact, they were patient recruiters.

Q. I understand what they did. That's why he got indicted, and that's why he's facing jail, and that's why he or she is looking to point fingers. We understand that.

But to the man on the street who sees these three people with licenses and qualifications, they appear capable, and indeed were capable, to provide home health services had it been done in accordance with the law?

A. Yes, but—

Q. I've heard the but.

With regard to CW number 4—let me just show it to counsel. The indictment in the case lists a series of checks

as part of the overt acts from 2007, December. That's docket entry 3 of the criminal case, page 12 and page 13 and 14, I believe.

In any event, if I show them to you, do you see these are the checks to the company, without naming the company related to CW number 4? You can ignore the handwritten notations that we've made for preparation.

A. Some of these checks I can't remember which ones go with which person to which company, but the CW, some of the checks [56] are in there.

Q. Some of the checks in the indictment related to CW4's company, right?

A. Yes.

Q. We're talking about checks in the amount of anywhere from $9,900 down to $4,000, something to that effect, right?

A. Yes.

MR. SREBNICK: Your Honor, I'm going to turn to CW5. Whenever it's an appropriate time for a morning break, I can break at any time.

THE COURT: I don't need a break. If you want a break, we'll take a break. We're going to go until about 12:10. Anybody need a break?

MR. SREBNICK: I might need one before then, but not now.

THE COURT: Let's plow forward.

On CW4, in the original declaration, you have reference to two payments, one of $130,000 to LTC and the next paragraph you've got $56,000 being paid by Professional. That only gives us a total of $186,000.

In your second supplemental you've got a total of $265,000. Why the difference?

THE WITNESS: The second supplemental for CW4?

THE COURT: Page 3, paragraph 7. If you look at page 14, also dealing with CW4, different numbers.

[57] THE WITNESS: When CW4 identifies ten patients for $265,000?

THE COURT: Yes.

THE WITNESS: The original declaration, that's what the bank records reflect, how much money he received from these two companies.

THE COURT: The difference is cash?

THE WITNESS: In the second one, it's what was billed for these patients of his by Medicare.

THE COURT: All right.

BY MR. SREBNICK:

Q. CW number 5, also a cooperator, indicted for other healthcare fraud activity?

A. Yes.

Q. Also entered into a plea agreement and also trying to reduce her exposure in terms of sentencing?

A. Yes.

Q. Did CW number 5 ever testify under oath?

A. Not to my knowledge.

Q. Same question for CW number 4. I forgot to ask you that.

A. No, not to my knowledge.

Q. So CW number 5, I have the reports that were produced, the redacted reports. Again, I don't have the patients, but according to your declaration, you are connecting CW number 5 to 50 patients, which I think is the largest number of all the [58] CWs, for a total of $2,122,893.96?

A. Yes.

Q. From reading the redacted reports, at least the way it appears in these redactions, which I confess I can't be certain because of the blackout, but it appears that CW number 5 claims that she was approached about a kickback scheme, but declined to do it.

A. Yes, she was approached by Sila Luis to recruit patients and to sign—have her doctor signed POCs.

Q. And CW number 5 claims that she, CW5, declined to do that, right?

A. Yes.

Q. Let's put this in context.

These interviews of CW5, are they occurring at the Federal Detention Center?

A. Yes.

Q. It appears to me, from the documents I was given, that CW5 was debriefed back in 2011, December 15th of 2011 at the Federal Detention Center, but it doesn't appear you attended that interview. It says the interview was by Special Agent Rolando Alvarez and a Susan Shimpenosis [phonetic]?

A. Yes.

Q. Do you know those two agents?

A. Yes.

Q. Have you had a chance to look at their report?

[59] A. Yes.

Q. Since it's redacted so much, I can't be sure, but it appears to me that when interviewed back in December of 2011 at the Federal Detention Center, I just don't see a reference to Sila Luis, although I do see a reference to LTC.

If I could approach to show you this. That's the only report I have of the interview of CW number 5 before Ms. Luis is arrested, I believe.

Strike that.

Let me let you review it, and then I'll correct that.

A. Yes.

Q. So the report you have is from 2011?

A. Yes.

Q. In 2011, did CW number 5 implicate Sila Luis by name, or in any way, other than mentioning LTC as an entity she had some contact with?

A. She advised that she went to go see the owner of LTC.

Q. Did she say who that was?

A. Not in this report.

Q. Could you look around to see if there's any other reference. I couldn't find it because there are so many redactions.

A. I believe she just says "the owner".

Q. Thank you. If you could see if you can figure out what the accusation is from that report, because I can't tell with all [60] the redactions. What is the accusation that CW5 is making regarding LTC in that report?

MS. TORRES: Your Honor, objection. The witness testified that he did not write this report and was not at that interview. I think he can testify generally to his knowledge of this—

THE COURT: The only thing he can testify to is his understanding.

BY MR. SREBNICK:

Q. Do you have an understanding of what CW5, back in 2011, was accusing LTC of doing?

A. CW5 went to the owner of LTC and discussed referring patients for kickbacks.

Q. Can you just put a blue mark where it says that so I can follow.

Okay, what about the previous paragraph?

A. This one?

Q. Yes.

A. Yes.

Q. Do you have an understanding of what the accusation is regarding LTC beyond what you first told us?

A. Yes.

Q. What is that?

A. At this particular clinic, CW5 saw the doctor at the clinic signing stacks of POCs for LTC without seeing the patients.

[61] Q. So CW5 claims she observed a doctor at a clinic signing POCs, plans of care, for LTC patients who the doctor did not physically see in front of him at that time?

A. Yes.

THE COURT: Can you tell me where that's set forth in the declaration.

THE WITNESS: I don't believe that's in the declaration.

THE COURT: I'm trying to figure out exactly what is being alleged here in paragraphs 48 through 51. Maybe I'm missing something, which may be the case.

It says that CW5 met with the defendant, and it offered the defendant kickbacks for referring patients. Then it

concludes that that offer was declined and suggests that no kickbacks were paid for those, right?

THE WITNESS: Correct.

THE COURT: The same thing seems to be true for the next paragraph, paragraph 50, except they want doctors to sign false plans of care in exchange for $500,000. That offer was declined.

THE WITNESS: Yes.

THE COURT: What is it that CW5 is testifying to with regard to kickbacks.

THE WITNESS: She's testifying that a patient recruiter for LTC brought their group of patients to her clinic [62] to become qualified for home healthcare, and CW5 observed these patients and had a relationship with that recruiter.

THE COURT: I must be missing something.

49, CW5 met with the defendant. The defendant offered to pay CW5 money in exchange for CW5 referring patients to defendant's clinic, right?

THE WITNESS: Yes.

THE COURT: That offer was declined?

THE WITNESS: Yes.

THE COURT: So nothing happens then, right?

THE WITNESS: Correct.

THE COURT: Although it may be evidence of showing knowledge or intent.

Same with regard to paragraph 50.

I can't figure out how that equates to $2 million plus in claims being submitted for 50 patients. I just don't follow it.

THE WITNESS: 51, the patient recruiter that she had the relationship with—

THE COURT: Don't use the pronoun. First of all, we're not dealing with proper names to begin with, so use at least designations.

THE WITNESS: CW5 had a relationship with an LTC patient recruiter who brought his group of patients to CW5's clinic to become qualified by CW5's doctor.

[63] THE COURT: Where does it say that?

THE WITNESS: Paragraph 51.

THE COURT: What you're saying is, based on what the recruiter told CW5—it's a double hearsay we're talking about.

THE WITNESS: CW5 verified those patients and observed those patients, made observations regarding those patients' medical necessity.

THE COURT: Thank you.

BY MR. SREBNICK:

Q. So paragraph 51 is your understanding of what CW5 says an unidentified patient recruiter says was the relationship between the recruiter and LTC?

A. Yes, and CW3 and 9 corroborate that this recruiter was a recruiter—

Q. I can't hear you.

A. CW3 and 9 corroborate that this patient recruiter was a recruiter for LTC.

Q. When you say CW3 corroborates it, is that the same recruiter that you had discussed earlier in the context of CW3 when we were talking about an unnamed recruiter?

A. No, a different one.

Q. CW3 identifies a second unnamed recruiter as having a relationship with LTC?

A. Having a relationship with the doctor at CW5's clinic.

[64] Q. Now, you said that CW9 also indicates that this recruiter, unnamed recruiter, had a relationship with some sort of claims of kickbacks with LTC?

A. Yes.

Q. Was CW9 the one who paid kickbacks to this recruiter that CW5 is identifying in paragraph 51?

A. I don't know.

Q. With regard to CW5, who according to your declaration is the owner of a medical clinic, CW5, as you discussed with the Judge, says that CW5 did not participate in any kickback scheme with LTC or Sila Luis, correct?

A. Right.

Q. But CW5 is then providing some hearsay information to you regarding another recruiter and 50 unnamed patients, right?

A. Correct, because CW5, those patients went to CW5's doctor.

Q. Got it.

This recruiter identified by CW5, is he or she cooperating with the government?

A. Not at this time.

Q. Has this recruiter spoken to the government?

A. Not at this time.

Q. Has this recruiter been indicted?

A. No.

Q. I was asking you earlier, the interview from 2011 of CW number 5, that interview is the one in which CW5 describes that [65] CW5 went to see the owner of LTC. At that time, did CW5 identify Sila Luis as that owner?

A. I don't believe in that report, no.

Q. Do you know if CW5 had identified Sila Luis at all in 2011?

A. I believe in subsequent interviews.

Q. In 2011, was CW5 unable to identify Sila Luis as the person who CW5 had met with on behalf of LTC?

A. I don't think the agents asked specifically, because that was not the focus of their investigation at the time.

Q. Did CW5 indicate that there was another owner of LTC that CW5 had a relationship with?

A. That CW5? Say that again.

Q. CW5 identified a different person as also being an owner of LTC, right?

MS. TORRES: Objection, can we clarify what time period we're talking about.

BY MR. SREBNICK:

Q. I'm trying to find out. I don't have all the information.

Did CW5 identify a second person as being an owner of LTC, someone other than Sila Luis?

A. Possibly. I would have to look at the report briefly. I don't remember.

Q. So in 2011, CW number 5 doesn't identify which owner he or she is referring to, correct? Just an owner of LTC, correct?

A. Correct.

[66]

Q. Then in 2012, in September, is when you participated in an interview of CW5 for the first time?

A. What date was it?

Q. September of 2012. Does that sound about right? September 13th, 2012.

A. That sounds about right. You have all the interview reports, so.

Q. She was in custody at that time, or was she out on the street?

A. In custody.

Q. Now, this is a person, CW5, that was indicted for participating in healthcare fraud and kickbacks and all sorts of stuff apart from LTC, right?

A. Yes.

Q. This is a person who, apparently, had no moral objection to doing that type of activity, correct?

A. She engaged in it, yes.

Q. Her claim to you was, while sitting at the Federal Detention Center, in order to somehow provide some information about Ms. Luis, claims that Luis wants to discuss the kickback scheme, CW5 declines it, even though CW5 is someone who was happy to do it in other instances, right?

A. At that point, I believe CW5 wanted to try to stay out of it, but ultimately engaged in her kickback scheme and the fraud.

[67]

Q. Was it credible to you that CW5, who was involved in healthcare fraud, is claiming that she was declining the opportunity to be involved in healthcare fraud when

supposedly approached by Sila Luis? Was that credible to you?

A. Yes, it's possible.

Q. Possible or credible? Anything is possible.

A. I believe it's possible. If she wanted to lie to us, she would have said that yes, that happened.

Q. It didn't happen. We know it didn't happen, right

A. Correct.

Q. But she's claiming that it was proposed to her so she can implicate Sila Luis, right?

A. That's what she said.

Q. Right. So she claims it was offered, but she claims it didn't happen; isn't that right with regard to CW5?

A. Yes.

Q. Then she claims that she heard from a recruiter that the recruiter had a kickback arrangement with LTC?

A. She was friends with that recruiter.

Q. At the end of the day, it's really CW5 providing hearsay about an unnamed recruiter?

MS. TORRES: Objection, Your Honor, I think we covered this question previously. The agent has answered it.

THE COURT: I think so.

Are you going to leave CW5 now?

[68]

MR. SREBNICK: Yes.

THE COURT: Before you do, I need some help here. In your original affidavit, you referred to CW5, but you didn't quantify the amount.

In paragraph 8 of your second supplemental declaration, you say that CW5 identified 50 patients. How was that done?

THE WITNESS: She was shown two separate lists of her doctor that she worked with at her clinic, and she identified those patients as this particular patient recruiter's patients, who were all brought to her clinic.

THE COURT: How did she identify those 50 as the group or cubby of patients that were going around for this recruiter?

THE WITNESS: She knew all the patients that came through her clinic. She recognized their names as that particular patient recruiter's patients.

THE COURT: Did CW5 identify it that way, that these 50 I can pick out because I know their names and they also were for LTC? I'm just confused because she turned down all these offers sometime previously to that. Then all of a sudden she's identifying patients.

THE WITNESS: She's identifying that recruiter's patients that she had that was her friend.

THE COURT: Then you went to the claims and matched up those 50 patients with claims that came to $2.1 million?

[69]

THE WITNESS: Yes.

THE COURT: All right. Mr. Srebnick?

BY MR. SREBNICK:

Q. I'd like to ask you now some questions about CW number 6. According to your declaration, it's 16 patients with Medicare collections of approximately $505,000?

A. Yes.

Q. CW6 is also a cooperating witness with an indictment for other criminal activity apart from the allegations in the LTC Professional case, right?

A. Yes.

Q. So CW6 has all the same motives and credibility issues as with any other cooperators we previously discussed, right?

A. Yes.

Q. Did CW6 testify under oath, to your knowledge?

A. Not to my knowledge, no.

Q. CW number 6 was a nurse?

A. Yes, and a recruiter.

Q. In CW6's capacity as a nurse, he or she—start over.

CW6, in his capacity as a nurse, was employed by LTC and Professional or just LTC?

A. A nurse at LTC and recruiter at Professional.

Q. Did CW6 provide any nursing services for patients at Professional?

A. Yes.

[70]

Q. Yes?

A. Yes.

Q. All right. So CW6 provided nursing services, was employed by LTC and Professional, right?

A. Yes.

Q. Now, CW5 was asked to identify people in a photograph. Do you remember that? And do you recall CW5 misidentifying Ms. Luis's husband as somebody else?

A. Yes.

Q. So without discussing names, do you recall that CW5 was—let me ask the government.

MS. TORRES: Aren't we talking about CW6?

MR. SREBNICK: Forgive me, I meant all of these questions, the last five or six questions, for CW6.

THE WITNESS: Yes.

BY MR. SREBNICK:

Q. With regard to CW6, cooperator, plea agreement, indicted, credibility issues, correct?

A. Yes.

Q. With regard to CW6, employed at LTC and Professional as a nurse through 2009, right?

A. And a recruiter, yes.

Q. CW6 misidentified Ms. Luis's husband as another person by the name of Salinas, right?

A. Yes.

[71] Q. CW number 6 told you that Salinas would pay kickbacks at a particular gas station on Northwest 138th Street and 67th Avenue, and was then shown pictures, misidentified Salinas by putting a finger on Mr. Luis's husband instead, right?

A. Yes, he misidentified—he clarified that later. He always called him by the name of Salinas. At the time, we didn't know that there was another partner at Professional named Salinas, so we put the two and two together and knew that he was talking about a man named Salinas.

Q. Let's be clear.

CW6 was telling you that there was somebody at Professional named Salinas, right?

A. Yes.

Q. Salinas, you determined, was a real person, right?

A. Yes.

Q. Salinas is not Ms. Luis's husband, correct?

A. No, correct.

Q. After CW6 goes on about how Salinas was the one involved in giving kickbacks, CW6, when shown a photograph, identified Ms. Luis's husband as this person Salinas, right?

MS. TORRES: Objection, Your Honor. There's no allegation in this case regarding Ms. Luis's husband. So I'm not sure what the relevance is of these questions.

THE COURT: Overruled.

Did you answer that question? I'm not sure people [72] heard it because there were other people talking. Did you answer the question?

THE WITNESS: Yes.

THE COURT: I thought so.

Let me jump in quickly. In paragraph 54 you say CW6 met with the owner. Is that the Salinas that we have been referring to?

THE WITNESS: Yes.

THE COURT: I have a question. Who is Salinas? Is he an unindicted co-conspirator?

MS. TORRES: Your Honor, I think the agent can explain the relationship. I believe he was, for a period of time, a co-owner of one of the agencies.

THE COURT: That's not my question. Is he an unindicted co-conspirator?

MS. TORRES: I'm not sure, Your Honor.

THE COURT: I assume you're asking me to attribute what Mr. Salinas said to CW6, as set forth in these various paragraphs, to the conspiracy.

MS. TORRES: CW6 talks about recruiting patients to one of the agencies at issue, Professional Home Care. Having had conversations with both Co-defendant Myriam Acevedo and this other owner, Mr. Salinas, regarding those payments, those kickbacks for those patients for that agency.

THE COURT: Why is a conversation with Salinas [73] relevant?

MS. TORRES: Well—

THE COURT: Let me finish my question. If he's not a co-conspirator?

MS. TORRES: Well, he was involved in the scheme, Your Honor, yes. He was one of the owners for a short period of time.

THE COURT: Well, if he's not a co-conspirator, how would this ever be relevant?

MS. TORRES: Your Honor, perhaps I'm misunderstanding the Court's question. He was involved in the scheme—

THE COURT: When you say involved with the scheme, what does that mean?

MS. TORRES: That he discussed the kickback payments with CW6.

THE COURT: Okay. But you haven't told me that he's a co-conspirator, so how can his statement come into evidence? I know we're not going in accordance with the rules of evidence strictly, but there's got to be some tie-in with Salinas to the conspiracy.

MS. TORRES: Well, he was part of the conspiracy. I apologize if I misspoke earlier. He and Myriam Acevedo were both involved with the agency Professional Home

Care, had conversations with CW6 about the payment of kickbacks.

THE COURT: Okay.

[74]

BY MR. SREBNICK:

Q. Did CW6 have any contact with Sila Luis?

A. CW6 arranged a meeting between Myriam Acevedo, Sila Luis, and a patient recruiter that he was the nurse for the patients that he saw.

THE COURT: Could you elaborate on that. That's not in your declaration, is it?

THE WITNESS: I don't believe so.

THE COURT: Can you kind of put that in context of what was going on.

THE WITNESS: Sure. CW6 was a nurse for a group of patients for a particular recruiter. That recruiter wanted to get into LTC. So CW6, who was already working at LTC, contacted Myriam Acevedo to arrange a meeting between the recruiter, Sila Luis, and Myriam to discuss bringing patients to LTC for kickbacks.

THE COURT: Okay.

BY MR. SREBNICK:

Q. I'd like to now ask you some questions about CW number 7.

According to your declaration, CW number 7 identified three patients for a total of $113,646.81?

A. Yes.

Q. CW7, another witness with similar motives and credibility issues like the prior CWs?

A. Yes.

[75]

Q. Any testimony under oath by CW number 7?

A. I don't believe so, not to my knowledge.

Q. Isn't it true that CW number 7 never met with Sila Luis?

A. Not directly. CW7 went to LTC where another patient recruiter that he was involved with met with Sila. So he went to the meeting. He just didn't participate. The other recruiter participated.

THE COURT: Could you go through that one more time for me.

THE WITNESS: Sure. This recruiter—

THE COURT: CW7.

THE WITNESS: CW7, he was approached by another recruiter and wanted to—that recruiter was going to get his two patients into LTC. So therefore, they went to go have a meeting with Sila. He didn't participate in that meeting.

THE COURT: Who?

THE WITNESS: CW7 and this other patient recruiter.

THE COURT: Went to meet with Sila. You're talking about the defendant?

THE WITNESS: The defendant, yes.

THE COURT: Did he observe the meeting?

THE WITNESS: Yes, out here in—the other patient recruiter conducted the meeting with Sila, discussed the kickback rates, and then went and told CW7, yes, this is the rate.

[76]

BY MR. SREBNICK:

Q. It's not clear to me. Was CW number 7 present for that conversation between this unnamed recruiter and Sila Luis?

A. He was there, but he was not present for the conversation because the other recruiter had the relationship with Sila.

Q. So the information that CW7 has now shared with the government is a report by CW7 of what this recruiter told CW7 happened in that meeting?

A. Yes, he physically went to LTC, but he wasn't physically present for that meeting.

Q. He didn't hear the conversation in realtime, correct?

A. Yes, it was the other patient recruiter who had that meeting because Sila was friends with the other patient recruiter.

THE COURT: He basically arranged the meeting and was not involved in the meeting?

THE WITNESS: The other recruiter arranged the meeting for him.

THE COURT: CW7 arranged a meeting with another recruiter to meet with the defendant, Ms. Luis?

THE WITNESS: The other recruiter arranged the meeting with the defendant on CW7's behalf.

THE COURT: The conversation about recruiting and payments was between whom?

THE WITNESS: Between the other recruiter and the [77] defendant.

BY MR. SREBNICK:

Q. Bottom line, CW7 is reporting back to you what CW7 was told by the recruiter had been discussed in a

meeting that CW7 did not himself hear in realtime, correct?

A. Correct, and then ultimately, he was paid kickbacks for those two patients.

Q. Who paid the kickbacks? Who physically gave him the money?

A. The other recruiter.

Q. The recruiter did?

A. Yes.

Q. Is this a different recruiter than the two you mentioned earlier in our conversation today?

A. No, it's one of the same ones as previous.

Q. Is this the one that was related to CW number?

A. 2, and CW number 1.

Q. I'd like to ask you about CW number 8.

According to your declaration, CW8 identifies one patient as having been involved in a kickback scheme, right?

A. Yes.

Q. According to CW8, CW8 had a relationship with Elsa Ruiz, as indicated in your declaration, correct?

A. Yes.

Q. Any contact with Sila Luis?

A. No, she knew she was the owner, but no, the contact was [78] with Elsa.

Q. CW8, was it a he or a she? Does it matter?

A. She.

Q. Is she somebody who was either indicted or facing charges?

A. Yes.

Q. Does she have a plea agreement?

A. Yes. But at the time we spoke with her regarding this, she had already served her time.

Q. Had she cooperated beforehand?

A. Yes, on a previous matter.

Q. Had she identified LTC in prior debriefings, because I don't have those reports?

A. Not to my knowledge. It never came up.

Q. What benefit, if any, was CW8 receiving in exchange for this debriefing in 2012 in which she implicated Elsa Ruiz? Any benefits?

A. None.

Q. She had already served her sentence?

A. Yes.

Q. Was she on probation, supervised release?

A. Yes, she was on probation.

Q. Did she receive any benefits, do you know, for providing this information regarding Elsa Ruiz?

A. Not for this case. She received a benefit for a previous case.

[79] Q. I don't have any idea who it is, so that's all the questions I have about CW number 8.

Let me just ask this globally. Is it fair to say that none of the interviews that you have now reported to the Court of the eight CWs, none of them were under oath, correct?

A. No, we don't conduct interviews under oath.

Q. So correct, none of them were under oath?

A. Correct.

Q. Now, apart from the cooperating witnesses and the allegations against LTC and Professional regarding

billings of Medicare, you now have access to the records of LTC and Professional. They're over at the Miramar facility that is housing the documents?

A. Yes.

Q. You also had access to the computers of LTC and Professional that were seized as part of the search and arrest in this case?

A. Yes.

Q. You've had access to bank records regarding the banking activities of these entities?

A. Yes.

Q. Have you had a chance to review any records to confirm, for example, that LTC and Professional had other sources of business and revenue apart from billing Medicare?

A. They had Medicaid billings.

[80]

Q. Are you familiar with other entities like Ever Care, Sunshine State, Vista, Providence, et cetera?

A. I'm familiar with Ever Care, yes.

Q. Have you done an analysis of how much revenue was generated by LTC and Professional from sources other than billing Medicare?

MS. TORRES: Your Honor, we'll raise an objection to this line of questioning, which is directed at what amount of funds were traceable to Medicare and which were not. An issue that we discussed earlier.

THE COURT: Why are we doing that? We have a provision in the statute that says substitute assets.

MR. SREBNICK: Perhaps when we discuss it, I want to make sure I have an adequate record. At an appropriate

time, we can take it up then if you prefer to do that. Do you want me to hold off?

THE COURT: No, go ahead and ask the questions you need.

BY MR. SREBNICK:

Q. Do you know what Quickbooks is, the accounting software?

A. Yes.

Q. Have you had a chance to look at or generate reports using the Quickbooks of the company or looking at the bank records of LTC and Professional to determine how much other revenues came in that were not from Medicare billings?

[81]

A. Our financial analyst has reviewed the records.

Q. Fair to say it's more than $10 million for the two entities?

A. I know it's in the millions. I can't remember exactly.

Q. Fair enough. I have the records so we can do it through another witness to be more specific, but the government has done that analysis, and it's clearly within the many millions of dollars, right?

A. Yes, and we're still continuing to do the analysis.

Q. I'd like to ask you some questions about your declaration regarding Medicare revenue going into various accounts belonging to LTC Professional and/or the defendant, correct?

A. Okay.

Q. In your declaration, and I think it's the first supplemental declaration, and that's docket entry 66.

Docket entry 66-1, page 4, paragraph 6. It indicates that the United States has been able to trace Medicare proceeds going into every bank account owned by Defendant Luis and/or her companies, et cetera. Do you see that?

A. Yes.

Q. You don't mean to say that only Medicare proceeds went into those accounts, correct?

A. There are some accounts where other deposits were made, yes.

Q. But that tracing hasn't been done in your declarations, [82] right?

A. Correct.

Q. With regard to the properties listed at paragraph 7 on that same page, when you say you've been able to trace Medicare proceeds, that means at least $1 or some amount of money from an account that had received Medicare can be connected to the property either through a maintenance payment, a tax payment, some payment in connection with that piece of real estate, right?

A. Correct.

Q. Again, that doesn't exclude that other revenues, non-Medicare revenues, also contributed to those pieces of real estate, correct?

A. Yes, it's possible, yes.

Q. With regard to the jewelry that was seized in the case, I think that's at paragraph 5. It's page 3 of your declaration, docket entry 66-1. There is an estimate of approximately $250,000 worth of jewelry that was found and seized by the government, correct?

A. Yes.

Q. Have you traced the acquisition of that jewelry to Medicare proceeds?

A. No, a lot of money was taken out in cash from the defendant's bank accounts. You can't trace cash.

Q. At least at the present time, you have not traced Medicare [83] dollars to the acquisition of the jewelry, correct?

A. That tracing is still ongoing, but we haven't seen any significant amounts going to—for the jewelry.

Q. I'd like to ask you about the properties in Mexico that the defendant herself notified the government about.

There are multiple properties that are owned by the defendant either in her own name or through a corporation. Has the government been able to trace Medicare dollars going to the acquisition of the real estate in Mexico?

A. We have shown Medicare money going to the defendant's corporation in Mexico. We've been able to show maintenance payments on condo buildings in Mexico.

Q. Have you done an analysis—because there are multiple properties in Mexico. Have you done a specific analysis as to each of, I think it's four pieces of real estate in Mexico?

A. Our analysis is still ongoing. We are still awaiting certain wire transfers from the banks.

Q. Okay. But as of today, and I'm not precluding that you're going to continue to do it, as of today, do you have anything to offer us in terms of tracing Medicare dollars to the particular pieces of real estate in Mexico?

A. Yes.

Q. What do you have on that?

A. I believe it's a wire transfer for at least one of the properties as a, don't quote me, I want to say a down payment [84] in connection with the sale of one of the units.

Q. Is that something you could then tender to us after court today perhaps?

A. I would have to get with my financial analyst, but you have all the financial records that we have to date.

Q. Right, I have gigabytes and gigabytes. I'm trying to identify what it is that connects the four pieces of real estate, trace it back to a Medicare dollar. That's what I'm asking for. Do you understand?

A. Yes, we do have some items, yes.

Q. There are a few properties in this list at paragraph 7. Do you have that before you, docket entry 66-is, page 4?

A. Yes.

Q. Do you see that the last two items of property on that page are an address at Indian Creek Drive?

A. Yes.

Q. Have you seen the records that show that that property was acquired before 2006?

A. Yes.

Q. Can we agree that 2925 Indian Creek Drive, Unit 316, as well as 2925 Indian Creek Drive, Unit 320, were both acquired prior to the dates of the conspiracy?

A. Yes, but taxes were paid with accounts which Medicare money flowed through.

Q. Got it. But the acquisition of those properties, you know [85] that they were paid for in full. There was no mortgage on the property?

A. I believe so, yes.

Q. So we'll address maintenance payments, et cetera, but in terms of the acquisition of the property, it was acquired with money not connected to indictment offenses, correct?

A. It was before the conspiracy period.

Q. There's a property that we know as the Blue Diamond, which is 4779 Collins Avenue?

A. Yes.

Q. Have you done a tracing of that property, of how it was acquired?

A. We showed payments by accounts—or a payment for the closing of that condo, I believe.

Q. The closing of that property occurred July 20th of 2010; does that sound right to you?

A. I don't know off the top of my head.

Q. Let me show you what I'm going to mark as Composite Exhibit 1.

THE COURT: We're going to take a break in five minutes.

BY MR. SREBNICK:

Q. Here is Composite Exhibit 1.

THE COURT: Is that a different subject-matter?

MR. SREBNICK: Yes.

[86]

THE COURT: Why don't we take a break now. We'll talk about our scheduling right now. You can step down.

We need to talk scheduling for a moment. How much time do you think you are going to be with this witness?

MR. SREBNICK: Well, it depends on how much detail Your Honor wants. If all I'm trying to establish, and maybe I can reach a stipulation over the lunch break with the

government—in fairness to them, it's a lot of information, but I think if we can reach a stipulation over lunch, we can avoid this entire inquiry.

All I'm trying to prove is that there were non-Medicare dollars that contributed to the acquisition of these various properties. There may well also have been Medicare dollars depending on what accounting methodology used. So that I can preserve—

THE COURT: Why don't you enter that stipulation. Based on the wording of 1345, substitute properties are assets, are just as good as tainted assets. That's my view. Maybe a stipulation in that regard might be useful to everybody.

MR. SREBNICK: If we do that, I don't think I have much more, five or ten minutes, but that's really what I needed to establish.

THE COURT: Does the government have any witnesses?

MS. TORRES: No, Your Honor, we do not.

THE COURT: Do you have a witness?

[87]

MR. SREBNICK: Depending on the stipulation issue, I do have a summary witness on these transactions.

MS. TORRES: Your Honor, I would like to ask some questions of the agent on redirect.

THE COURT: I asked for proposed findings of fact and conclusion of law, but I didn't get them.

MS. TORRES: The government filed them late yesterday, Your Honor.

MR. SREBNICK: You did not get any from us. We notified chambers that in light of the disclosure of all of the redacted reports—

THE COURT: I probably have to get both sides. You may have to amend yours a little bit based on what we heard here.

Taking a closer look at the law, it seems to me that this case could be resolved on the indictment. Is that the government's position?

MS. TORRES: Yes, Your Honor, on probable cause of the criminal conduct and the amount.

THE COURT: Yeah, that's what I'm thinking. The only reason the Eleventh Circuit said there was a necessity for a hearing was to show the nexus between the criminal activity and the assets that were frozen.

Under the statute we're proceeding under, there is no requirement of the same because substitute properties are just [88] as good as tainted properties. At least that's my view.

The indictment has come out charging the three defendants with healthcare fraud and conspiracy, various types, one of which is Count 1, which I think is all inclusive, but maybe doesn't include payments to recruiters.

Count 1 only deals with either providing medical attention that was not necessary or not providing it at all. Is that the sum and substance of Count 1?

MR. SREBNICK: I think it also includes kickbacks.

MS. TORRES: Your Honor, there's a conspiracy count to pay kickbacks and medically unnecessary services, and then there's substantive charges for the payment of kickbacks.

THE COURT: Let's see. Count 1 is entitled "Conspiracy to commit healthcare fraud"

MS. TORRES: If Your Honor looks at paragraph 8—

THE COURT: I'm looking at 3B. It says, "The purpose of the conspiracy was the submission of false or fraudulent claims, and B, offering or paying kickbacks."

Okay. But the next one is also a conspiracy claim. Count 2 is a conspiracy claim to pay healthcare kickbacks under a different statute.

So you've got—by the way, that does not quantify the amount. Count 1 does. But it seems to me that if I'm reading the statute correctly, and I think I am, that there is no need to have this hearing we're having, quite frankly, [89] because substituted assets are as freezable as tainted assets.

In the indictment, we have, in my view, a finding based on probable cause of various types of Medicare fraud, including kickbacks and also submission of false and fraudulent claims, payments in excess of $70,000, and submission of approximately $74 million rather in false and fraudulent claims, which result in payment of $45 million.

Why do I need anything more than that? Think about that, and when we come back, we'll talk about that. See if you can get your stipulation. It seems to me that that should be a stipulation that you can resolve, particularly due to the fact that I feel that substituted assets apply in this case.

If you just want to make your record, Mr. Srebnick, I think that should be done.

I'm sorry, I'm having a tough time talking. I'm taking some kind of muscle relaxants, and it's dried my mouth up. I'm having a tough time talking. I feel like I've got cotton in my month. We'll return 20 after. We will see you at 1:20.

[There was a recess for the noon hour].

THE COURT: All right, where is everybody?

MR. SREBNICK: The government is coming in right behind us, Your Honor.

THE COURT: All right. Is everybody ready to proceed?

MR. SREBNICK: Yes. In order to streamline the [90] proceedings, the parties have attempted to reach a stipulation we hope the Court will accept.

The parties are prepared to stipulate, for purpose of this hearing alone, that an unquantified amount of revenue not connected to the indictment flowed into some of the accounts and some of the real estate that is currently subject to the temporary restraining order.

Accordingly, as a result, the government agrees that the defendant has made a sufficient showing that the TRO may currently be restraining substitute assets that would otherwise be available to retain counsel of choice.

THE COURT: Agreed?

MS. TORRES: That was our agreement, Your Honor, yes.

THE COURT: Okay.

MR. SREBNICK: With that understanding, Judge, I will not need to go property by property or account by account, and that's going to save us quite a bit of time.

THE COURT: Right.

MR. SREBNICK: What I would like to do, if I could have a moment, I would like to offer without objection, but subject to the government double checking the work product, what I'm going to refer to as Composite Exhibit Number 2. It is the printout from Quickbooks. Quickbooks.

What it appears to demonstrate is that those revenue sources that are the subject of the stipulation, with regard

to [91] LTC, there were revenues of $15,024,932.97 from sources not subject of the indictment.

THE COURT: 15 million?

MR. SREBNICK: Yes, 15 million plus.

MS. TORRES: Your Honor, I would just note for the record that we received that report late last night. We have not been able to look at it. While I agree it can come in for the purpose of showing other revenues, the government would like the opportunity, if appropriate in the future, to contest the numbers or other aspects of the report that we have not yet been able to analyze.

MR. SREBNICK: Understood, Your Honor.

This printout came from the computers that were seized by the government. If the government runs into any issue, we have no objection to them bringing that to everybody's attention. That's Composite Exhibit 2.

To whom do I tender it, Judge?

THE COURT: What happened to Composite Exhibit 1?

MR. SREBNICK: That was the one that the witness was looking at regarding the condominium Blue Diamond, which is when we broke.

THE COURT: Are you offering that into evidence as well?

MR. SREBNICK: It's not necessary given the stipulation. So only composite Exhibit 2 is necessary.

[92] I would like to conclude my examination very briefly. It will take about five minutes with Agent Warren.

THE COURT: Take your time.

Agent Warren, please take the stand again, and I will remind you that you are still under oath.

BY MR. SREBNICK:

Q. Agent Warren, with regard to all nine confidential witnesses that are the subject of your declarations, did any one of them tell you that Sila Luis was involved in or knew that patients were being paid?

A. Well, CWs 9 and 4 dealt directly with Sila Luis regarding kickbacks that were going to be passed along to the patients. They had discussions.

Q. So CW number 9 and CW number 4?

A. Yes, and CW number 5 had discussions with Sila regarding kickbacks for patients. If you're going to pay a kickback, it's for the patient.

Q. That's what I was not clear on.

I understand, from what you told us so far, that there are recruiters who get paid to recruit patients, but I did not see anything in your reports or in your declaration that there was any discussion at all with Sila Luis that the recruiters would then share the money with the patients. I just didn't see that. That's why I was asking.

A. I don't know if there's a specific conversation, but during [93] these conversations regarding the kickbacks for patients, it's implied that the money is for the patient. The recruiter passes along the money to the patients.

CW number 9 advised that the money went to the recruiters, who would then pay their patients.

Q. Just to be clear, I understand that the recruiters and perhaps CW number 9 indicated that they, those recruiters, shared the so-called kickbacks with patients. I assume the recruiters kept money as well, right?

A. They kept a portion, and they passed along another portion to the patient. If the patients weren't paid, they would have never gone into LTC.

Q. Well, a patient can, if I'm mistaken you'll tell me if I'm wrong, a patient has different options of which agency to use for legitimate services. I assume there were patients you discovered in investigations who received genuine services that requested kickbacks. Have you seen those cases?

A. Well, a person who's receiving kickbacks is illegitimate in the first place.

Q. I understand they're, quote, "illegitimate" because there's a kickback involved, but that patient may well qualify under regulations or otherwise qualify to receive services that are medically necessary, right?

A. It's possible.

Q. So the patient, while qualified to receive services, [94] violates the law by taking a kickback to receive the service from a particular agency?

A. If you really needed the service, and you're going to go to a particular agency based upon them paying you X amount of dollars, do you really need that service?

Q. A diabetic patient who qualifies for services that can legally generate $10,000 in billings a month for the agency would violate the law if the patient demanded from the agency a kickback from that $10,000 that the agency was billing Medicare, right? That would violate the law, right?

A. Yes.

Q. The patient could qualify, but still request, and in fact demand, from the agency some kickback in order to allow the agency to be the one to provide the service, right?

A. It's possible.

Q. Have you seen that scenario in investigations before?

A. Where the patient legitimately needs the service?

Q. And then still asks for a piece of the action, so to speak?

A. I have seen that, yes.

Q. So, what I'm trying to close this out by understanding, do any of the reports indicate that any of the cooperating witnesses actually told you or the government agents you worked with that Sila Luis was told that the so-called kickbacks were actually going to patients?

A. I'm not sure if the conversation she had with these [95] recruiters, if they specifically told her that they were going to pass along some money to patients, but that's how these schemes operate.

Q. I understand how they generally operate, but in this case, limited to the interviews you and your colleagues conducted, did these cooperating witnesses report to you or your colleagues that Sila Luis was told that part of the kickback, so-called kickback, was going to the patients as opposed to one of the CWs or one of the recruiters?

A. Sila Luis, in regards to CW number 4, she laid out what the kickback rates were for a diabetic patient, for a physical therapy patient, for a monitoring patient, a blood pressure monitoring patient, so it's implied.

I don't know if they had that direct conversation, but they were going to pass along a portion to the patient.

Q. I guess what I'm confused about, the so-called kickbacks are based on a patient being recruited to LTC. The so-called kickback rates are on a per patient basis, right?

A. Yes.

Q. But that doesn't necessarily mean that the patient gets the money. It may well mean that the recruiter gets the money per patient, right?

A. In our investigation, cooperating witnesses have said that they paid the patients. If the patients weren't paid, they would have gone to another agency.

[96] Q. I understand that part of it. Last time I'm going to try to ask it.

Beyond what you just said, did the CWs actually tell you or your colleagues, actually tell you, documented in a report, that Sila Luis was told that part of the so-called kickback was going to the patient, him or herself, as opposed to just the recruiter?

A. I don't think the question was asked specifically like that to the cooperators.

Q. Understood. So then the answer is no, given the questions that you asked of the cooperators, correct?

A. I would say it's implied.

MR. SREBNICK: Judge, those were all the other questions that I had given the stipulation that we reached.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. TORRES:

Q. Good afternoon, Agent Warren.

You were asked a series of questions regarding whether certain of the cooperating witnesses spoke directly to the defendant. Do you remember those questions?

A. Yes.

Q. You said that some of them did not speak to her directly, correct?

A. That's correct.

[97]

Q. Can you describe to us, based on your investigation, what your understanding is of the defendant's role at LTC and Professional.

A. The defendant's role was owner and operator of LTC and Professional Home Care Solutions. She was the owner. She controlled the bank accounts. She received the most money. She was on the corporate records as being President. So she was the owner in this scheme.

Q. In addition to her ownership of the companies, what is your understanding, based on your investigation, of her role in the more day-to-day operations of the business?

A. Well, in the daily operations of the business, Sila dealt directly with Myriam and Elsa—

THE COURT: Can I interrupt for a second. Can you refer to the people in the last name, please.

THE WITNESS: Got you.

Can you repeat the question.

BY MS. TORRES:

Q. What is your understanding, based on your investigation, of her practical role at the agencies, in their operation?

A. Well, the defendant was the owner. Ruiz and Acevedo took orders from the defendant in operating the day-to-day operations at both companies.

The defendant directed CW number 9 to cash checks in order to pay patient recruiters. Sila—I'm sorry, the [98] defendant, I mean, she controlled the bank accounts, and in regards to the daily operations, she mainly compartmentalized herself to only deal with Acevedo and Ruiz and some of the office staff members.

Q. You mentioned CW9. In addition to CW9, have you gathered any other evidence indicating that the defendant had knowledge of the kickbacks that were paid to patient recruiters to obtain patients for her agency?

A. CW number 4 dealt directly with the defendant in the negotiation of kickbacks.

The defendant had conversations with CW number 5 regarding trying to receive recruited patients and the kickback rates.

Q. And CW9?

A. And CW number 9, yes.

Q. Can you explain the information that you gathered from CW9 on this issue.

A. Well, CW number 9 was directed by the defendant to pay certain patient recruiters and, again, to withdraw cash from the bank accounts. The checks would be written to Ruiz, which she would then cash, to pay these recruiters.

CW number 9 told us that the defendant had the relationships with the recruiters. So the defendant's recruiters at LTC were the same staff and recruiters over at Professional.

[99] Q. Now, you referred to cash payments. Have you reviewed the bank records in this case for the agencies?

A. Yes.

Q. What information have you gathered based on your review of those records?

A. It shows that the defendant received the most money, over $4.5 million in this scheme. It shows family members cashing checks all at the same time at or under $10,000.

CW number 9 told us this was done in order to generate cash in order to pay all of these recruiters. A

large sum of money, over $1 million from February of '06 through July of '09, over a million in cash was taken out from Sila Luis's bank accounts.

Q. What account was that? One account?

A. That was one main account, 0536, at SunTrust. Cash was taken out of other accounts as well, but we're still in the process of determining and finalizing how much was converted into cash. But just that one account, over $1 million was turned into cash.

Q. Who turned that $1 million into cash? Who withdrew that cash?

A. The defendant withdrew some of the cash. The defendant's family members would cash checks to help convert the money into cash. Acevedo and Ruiz would help convert the money into cash.

Q. Based on your experience investigating home health [100] agencies, what did those withdrawals indicate to you?

A. They indicated a large pull of cash in order to pay these recruiters. All the cooperating witnesses told us, except for one, that they were paid in cash. It corroborates that they needed to pull money out in cash in order to pay for these recruiters who brought them patients.

Q. You've been involved in the investigation of other home health agencies as well; is that correct?

A. Yes.

Q. Can you tell us, based on your experience investigating home health agencies engaged in this type of activity, what typically the relationship is between the owner of the agency and the patient recruiters?

A. Normally, the owner—

MR. SREBNICK: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: Normally, the owners have a relationship with the patient recruiters because they need patients to bill Medicare for. The patient recruiters seek out these owners, establish relationships, because the owners need a patient pool in order to bill Medicare.

THE COURT: This is not something that's a surprise to me. We see it all the time. The testimony is not particularly relevant.

BY MS. TORRES:

[101]

Q. There's one additional question regarding the owner's relationship with the nurses in these types of agencies.

A. A lot of times, the owners don't have any relationship with the nurses. The schemes are set up like that. The nurses are over here, and the owner is way over here to the right. They are compartmentalized, and I think the scheme is designed that way.

Q. You were also asked a series of questions suggesting that the defendant may not have known about what was happening at these two agencies. Do you remember those questions?

A. Yes.

Q. What evidence have you gathered in this investigation regarding the defendant's control of her financial affairs?

A. Well, the defendant has opened and closed numerous bank accounts. Well over 40.

The defendant has a company in Mexico, transferred money over to Mexico, has property in Mexico.

The defendant is a savvy—she understands this business.

Q. Now, I believe you spoke a little bit earlier about who benefited from the scheme at these two agencies. The nurses and patient recruiters stood to gain money from the scheme, correct?

A. Yes.

Q. Who at these two agencies have you seen, through your [102] review of the bank records, benefited the most?

A. The defendant.

Q. Can you explain the amount that you've seen in the bank records.

A. The defendant received over $4.5 million from the scheme, at least.

Q. How about the defendants's family members?

A. A lot of them worked for LTC. They also received money. Her husband received over $1 million. Her daughter received approximately $500,000.

Q. Based on your review of the bank records and your investigation of this case, is there anyone associated with these two agencies who even came close to receiving the kind of benefits that the defendant received?

A. No, the defendant received, obviously, the most money in this scheme.

Q. Now, you were asked some questions about nursing notes prepared for these agencies. Do you remember those questions?

A. Yes.

Q. What is your understanding of how the nursing notes were to be prepared?

A. They were to be prepared by the nurses. LTC didn't want them being prepared inside their office. They wanted

to be able to put up a barrier. They just wanted the nurses to turn in the notes.

[103]

Q. What is that understanding based on?

A. Well, it's based upon some of the cooperating witnesses, what they've told us. This scheme is set up that way. The nurses falsify their notes. Their Quality Assurance Department, at least in this case, assisted with the falsification of the notes.

Ultimately, the agency is billing between $14,000 and $18,000 for 60 days for all of these diabetic patients.

Q. Now, you were asked some questions about CW number 4, who held himself out to be a home health aid. Do you remember those questions?

A. Yes.

Q. You were asked questions about whether CW4 had a corporation?

A. Yes.

Q. CW4 was paid checks to that corporation, correct?

A. Yes.

Q. Based on your experience in this investigation and in other home health agency investigations, is it typical to see corporations of this kind?

A. Yes, it's very common. A lot times, recruiters and nurses will start up companies in order to send their kickback money through—they thought that it would seem more legitimate.

Q. Now, you were also asked a series of questions regarding CW5 and the patients that the owner of the medical clinic, CW5, [104] identified. Do you remember those questions?

A. Yes.

Q. Can you explain again, who are the patients identified by CW5.

A. They are patients from a recruiter who worked with LTC, who brought his patients to CW5's clinic in order to receive home healthcare prescriptions.

Q. You know the identity of those 50 patients?

A. Yes.

Q. CW5 has identified those as the patients that were brought to her clinic?

A. Yes, she recognized those names.

Q. Now, you were also asked questions regarding several of the CWs. The questions were regarding the first time they provided information to the government and whether or not, during that first meeting or debriefing with the government, they mentioned LTC or the defendant. Do you remember those questions?

A. Yes.

Q. Can you explain the context of that first meeting with government.

A. That was with other agents investigating other companies. So those other agents would have elaborated on other companies that they were not interested in at the time.

Q. So those matters pertained to other investigations?

A. Correct.

[105] Q. Now, you've been involved in the investigation of the defendant from the beginning; is that correct?

A. Yes.

Q. Of the nine cooperating witnesses that we've discussed, they are addressed in your declarations, have

any of them stated to you or indicated to you that the patients came to these agencies legitimately?

A. No, not in my investigation, no.

Q. Now, you were also asked about all of the different cooperating witnesses, questions about whether they had something to gain by cooperating with the government. Do you remember those questions?

A. Yes.

Q. Can you tell us, based on your experience investigating home health agencies in the past, how the government pieces together what's been happening.

A. What do you mean?

Q. Well, can you tell us a little bit how you build your investigation in these kind of cases.

A. A lot of times we ask existing individuals who are cooperating in other matters—they've all worked for numerous other home health agencies, so we start piecing together and start seeing all these cooperating witnesses that worked for all of these companies. We've come up with a group of individuals who all happened to work at LTC and Professional as [106] well.

Q. Is it common in some of these other investigations to also rely on information provided by participants in the scheme?

A. It's very common.

MS. TORRES: Your Honor, can I have one moment?

THE COURT: You may.

MS. TORRES: Your Honor, I would ask a series of questions regarding asset tracing, but I believe that, based on the stipulation, we don't need to address those issues today.

THE COURT: All right.

MS. TORRES: No other questions. Thank you.

THE COURT: Any more witnesses?

MR. SREBNICK: May I ask anymore questions based on the redirect?

THE COURT: No. Direct, cross, redirect.

MS. TORRES: No other witnesses for the government, Your Honor.

THE COURT: You may step down.

[Witness was excused].

THE COURT: So the government rests in this mini-trial, so to speak?

MS. TORRES: Yes, Your Honor.

THE COURT: Mr. Srebnick, do you have any witnesses or other exhibits you want to offer?

MR. SREBNICK: Given the stipulation, I don't think [107] there's anything more I need to present on the tracing issue, so there's nothing else to present on that point.

If I may just have a moment?

THE COURT: Sure, take your time.

MR. SREBNICK: Given the parameters of the hearing, I have nothing further.

THE COURT: Okay. Let's take a recess and let me have the proposed findings of facts and conclusions of law that I spoke of earlier. You're probably going to have to refile them, government.

Here's my thinking on this, having looked at the cases before this hearing and seen what the evidence was, reviewing the indictment, it's my preliminary view that, unlike from the other cases, we have a situation here where

we may not even need to do the tracing to establish a nexus between the criminal activity and the fruits, the tainted assets that were generated by that criminal activity, because under 1345, not only the tainted goods are subject to a freeze, but also substitute assets or properties.

What I'm going to ask you to do is present brief argument on that point, and since we've gone through this hearing and produced a lot of evidence, I want to have a back-up position dealing with whether the government has shown that nexus.

The reason I want to do that is because I suspect [108] there will be, regardless of which way I rule, there will probably be an interlocutory appeal. So we might as well complete the whole process so that if it turns out that I overstated the import of substitute assets compared to the indictment, then I will have other positions set forth.

Then either I agree or disagree that the government provided that nexus evidence sufficiently. The standard, of course, and I'm repeating myself, is probable cause.

Now, do you want to do anything with regard to Ms. Luis's ability to pay for counsel other than the frozen assets, because that's the defendant's burden, as I understand it. Or we can postpone that if you want.

MR. SREBNICK: Well, I think those issues might depend on the Court's ruling as to the size of the restraint.

If the Court is ruling that it's $45 million, then I don't think there's any claim from the government that she has near that amount of money.

If the Court was going to restrain something closer to the amounts that are currently seized, then there might be an issue whether unrestrained assets are available.

For the time being, if the restraining order reaches $45 million, the government's analysis we heard today was that Ms. Luis only made $4.5 million, and perhaps another $1 million to family members.

To the extent that money is even still available, [109] which we believe it's not, that's a separate factual issue, it's nowhere near $45 million. One way to reach the point is for the Court to rule on what the size of the restraining order is and then, at that point—

THE COURT: That's fine. I leave it to you all to think about how long you need to put those memos together. Obviously, the sooner the better, but I don't want to put you under any undue stress.

What is your proposal of when you want to submit those? The proposed findings of facts and conclusions of law is what I'm referring to. How much time do you need?

MS. TORRES: We submitted one to the Court, so amending it won't take very long.

THE COURT: Not very long is like beauty in the eye of the beholder. Some say it may be three days. Some say three months. I really don't care. What works out for you?

MR. SREBNICK: I would request until a week from Friday, nine days.

THE COURT: Does that work for the government?

MS. TORRES: Yes, Your Honor.

Can I ask an additional question?

THE COURT: Sure.

MS. TORRES: The Court was just discussing the tracing issue and that it wanted to ensure that that was addressed in the proposed order. Did I understand that correctly?

[110] THE COURT: Yes. Let me give you my thinking. Based on the Kaley decision and all the other decisions I've read, the hearing was to determine whether the government could show a nexus, that is that there was a connection between criminal activity and the assets being frozen.

In Kaley, there was a totally different statute. There was nothing to indicate that anybody made the determination about the amount of fraudulent transactions, and when I read the Kaley decision, particularly Kaley Number 2, it strikes me that because 1345 doesn't distinguish between tainted and untainted assets, there's no reason to show a nexus. All you have to show is that there was a violation of the criminal act.

There were funds that were tainted by virtue of that, and that there were funds being held or that are already frozen, and that's it. Don't have to show that those funds were funds coming from Medicare, Medicaid, Blue Cross Blue Shield, whomever.

That's what Congress's intent was, to substitute those new assets so the defendant can't say, "Well, yes, I defrauded the government of $1 million. I spent that particular million dollars on watches and fancy cars, and all I have now is another $1 million, but that was from Blue Cross Blue Shield, not from Medicare."

It's pretty obvious to me that's what Congress [111] intended. So I think that's a preliminary determination on the matter. All we need is the indictment such that we have here, which has not only the criminal activity, but it gives us an upside in terms of $45 million.

I'm prepared to listen to your arguments and memos, which is essentially what your proposed findings of fact and conclusions of law is going to be.

I also want a back-up position in the event that I overstated or misunderstood the extent of some of those comments about the limited purpose for the hearing. Even though there has been a finding by the grand jury that there were criminal violations—

MR. SREBNICK: May I address the Court on that?

THE COURT: No, I'm waiting for him to stop talking. Even though there were criminal violations in that amount, that we still need to show some nexus. I just don't see what the purpose is, but I may be wrong.

So I want to have a fall back position so that I can then look at the evidence to see if there has been a nexus established for an amount in excess of the frozen funds, which is about $2 million.

Okay, go ahead.

MR. SREBNICK: I think what the parties can agree upon is that that's an extremely complicated process that involves a whole other area of the law with regard commingled assets.

[112] I gave the Court a citation at the last status conference, the Banco Cafetero case. We have not found any Eleventh Circuit case that teaches us how to do the accounting for the following reason.

To give a simple example, if one bank account receives Medicare money and receives Blue Cross money, to use the Court's example, if there's $1 million of Medicare money that's part of the indictment, and there's $1 million of Blue Cross money, and now there's $2 million in that account, if from that account $500,000 goes to purchase a piece of real estate, it begs the question is that piece of real estate traceable to the Medicare fraud?

If the answer is yes, what percentage? Was the $500,000 that went to that piece of property all Medicare? Was it all Blue Cross?

THE COURT: Let me stop you. Is there any case out there that says once they're commingled they become tainted unless the defendant can show an independent source? I don't know. I'm just asking the question. Let me jump ahead. So you prefer to put that issue aside?

MR. SREBNICK: I'm saying it's an extremely complicated issue, and it's going to require a lot of thinking and a lot of accounting.

THE COURT: Give me your proposed findings of facts and conclusions of law based on what I said is my preliminary [113] view, which is that, based on this particular indictment, what it does, nothing else is necessary.

The indictment itself establishes probable cause for the violation and for what I will determine as loss, or tainted claims payments, and then on a purely—looking at the indictment, whether it meets that standard.

The second would be, based on the evidence that's been presented today, was that same testimony sufficient to establish criminality and an amount in excess of what's presently frozen, which would be—I think that's what I am going to have to prove, given the substitute asset provision in 1345. So we won't get into tracing any assets. Does that make sense to everybody?

MR. SREBNICK: Yes. May I assume that our proposal would be what we would like the Court to rule upon versus what the Court has indicated it intends to rule upon?

THE COURT: I want to give you an opportunity to show me I'm wrong. We haven't really had a deep discussion about Judge Marcus's opinion and how he wrote

it, the Kaley opinion and other opinions, which all seem to be in context other than the one we have here where you have a statute that provides for the freezing of substitute assets.

They all go off to say that the defendant is entitled to some kind of hearing. They don't necessarily define what that is, but some hearing to establish a crime that generated [114] --whether there's a nexus between the two.

But it seems to me when you have the statute we're dealing with here, there's no need to meet that second step. Tell me why I'm wrong in that regard. The government will tell me why I'm right.

Also, based on the indictment itself, I'm going to see what the evidence is to support that same proposition based on the evidence that was presented here today.

MR. SREBNICK: Would the Court like me to identify now some of the legal issues that I think emanate from the hearing? That way we're not sort of passing ships in the night.

THE COURT: Sure.

MR. SREBNICK: One thing you heard today was that the forms that were signed by Sila Luis, we'll just accept for the purposes of discussion that Sila Luis is the author of these forms, docket entry 96-2, pages 1 through 17, all of them except one are dated prior to the conspiracy, meaning prior to 2006.

Only one was signed, but it was signed in 2012. Only one was signed after, in 2012, as to LTC at a time when LTC was no longer submitting claims to Medicare.

We believe that presents the issue under Medina whether the evidence that you've heard is sufficient to

constitute healthcare fraud as defined in Medina, given that none of the forms that were signed were signed at a time when [115] claims were being submitted to Medicare during a kickback period.

THE COURT: I thought that's where you were going. Isn't there evidence in the declarations that, with regard to signing the original application, a representation that the companies would comply with Medicare laws?

MR. SREBNICK: Yes, but under Medina and the Guerra defendant in Medina—and I have the language from Medina. I just want to flag it so everybody knows what we'll be arguing and be prepared to address it.

THE COURT: Wait a second. I have Medina here someplace.

MR. SREBNICK: It's at Medina pages 1297, 485 F.3d 1297 and 1298.

THE COURT: What's the page?

MR. SREBNICK: Pages 1297 through 1298. There's about three paragraphs.

THE COURT: Bracket number 5, the government argues the fact—

MR. SREBNICK: Yes, that's where I would begin. There are about three or four paragraphs there that seem to make this point.

THE COURT: Response?

MS. TORRES: Your Honor, my understanding of Medina is that after the defendant in that case signed the Medicare [116] application forms to enroll with Medicare and certify that she would—

THE COURT: That's my understanding too. That's what I think it says. I was very involved in that case, obviously. I'm trying to find where the evidence is in the

record when the two entities signed the original applications.

I believe every request for payment includes some certification, doesn't it, that this has been in compliance with Medicare laws?

MS. TORRES: I believe so, but the application itself doesn't end because it's not signed again every year.

THE COURT: I understand that. I'm saying I thought I saw that in one of the declarations. I think it was the very first declaration. Let me see if I can find it.

Paragraph 13 of the second supplemental declaration of Agent Warren.

MS. TORRES: Yes.

MR. SREBNICK: Those are the ones in evidence before Your Honor, and none of those were signed during the timeframe that Medicare was receiving billing requests from LTC or Professional.

THE COURT: Are you suggesting that a clinic can get a Medicare permit or license, sign the enrollment agreement, and for two years operate as a legitimate clinic, and then decide not to be legitimate and start paying kickbacks, and then you [117] have to do another enrollment agreement whereby you represent you have to comply with Medicare rules and regulations?

MR. SREBNICK: What I'm saying is that, under your scenario, Your Honor, that would violate the kickback provision, but under Medina, it would not violate 1347 because there must be a false statement being given to Medicare.

So the enrollment that predates the kickback scheme isn't sufficient. There needs to be some false statement

made by the defendant during the course of the kickback scheme.

In this case, on this record—

THE COURT: Wait a minute. I'm missing something. With regard to the kickback or the treatment that was not necessary?

MR. SREBNICK: For the fraud count under 1347. I think that's Count 1, one of the predicate offenses under Count 1. For it to be fraud based on kickbacks alone, it must be kickbacks plus a false statement, but aside from medically necessary, that's a separate fraud.

But if the government is relying just on a pure kickback scheme, it must be a kickback plus a false certification that the company is in compliance with all the Medicare regulations. That false statement must occur during the kickback scheme, not before. It has to occur during.

THE COURT: I don't think that's the law. I will wait for your argument. I'm not sure anybody has argued this, but I [118] thought, based on some case I had someplace in the last 13 years, that there was a certification required for each submission. Am I incorrect on that? You're the experts.

MS. TORRES: I think that's correct, Your Honor.

THE COURT: Don't you think you should put that in the record?

MS. TORRES: We will, Your Honor. We can provide the appropriate citation. In Medina, the Court held there that after that provider agreement and enrollment application was signed, every single kickback that came after that was tainted and constituted healthcare fraud. We believe that Medina supports our position here.

THE COURT: I think so too.

MR. SREBNICK: The government is right, except that in Medina, the kickback scheme had already begun when the defendants submitted the false statements of certification. That was the key to Medina.

THE COURT: I think you're reading that pretty narrowly.

MR. SREBNICK: Understood that the Court disagrees.

THE COURT: I think it's a little narrow. If nothing else, there's an implied representation. You say on day one that we're going to comply with all the rules and regulations, and on day five you submit your first false claim, I think it's clearly implied, if not expressly made, that that is in [119] compliance with the rules and regulations, because the enrollment certification is ongoing. It's a forward thing because you don't submit them until you're enrolled.

MR. SREBNICK: Forgive me. I'm assuming, on this record, there was no false statement at all between '05 and '12. Because the exact quote in Medina was based on testimony that Guerra was a patient recruiter, who paid patients to go to the pharmacy before she became a Medicare provider, a jury could have reasonably concluded that Guerra knew full well she would continue to pay kickbacks when she signed the forms promising that she would not.

Therefore, signing the Medicare provider applications would qualify as a knowing misrepresentation under 1347.

So it seems to me, based on that exact language, that the key to the conviction under 1347 was that Guerra was already engaging in kickbacks when she signed the promise not to fail to comply with Medicare. I could be

wrong, but that's how I read it. That's the issue we're briefing.

The reason why I think that's important is because if this case proceeds only on a kickback theory and not on a 1347 fraud theory, we will brief the issue.

I think we briefed it, but we'll say in our findings of fact that kickbacks alone without, quote, fraud does not generate a loss, restitution, et cetera, so the restraining order should not in any way restrict the defendant from using [120] her assets to retain counsel, because there's no government interest sufficient to warrant the restraint on those assets needed simply to penalize the defendant at the end of the case.

The money generated—I think Your Honor used the word "disgorgement", that disgorgement is not a theory that would justify the restraint of assets needed to retain counsel.

THE COURT: Interesting argument. If I'm correct in my recollection that each individual claim has a representation that it's in compliance, that issue is moot.

You know, with all these people who have this much experience in this area of law, not one of you know whether there's a separate representation? I would be shocked if there isn't one.

I believe I've read it in another case, another place, where the anti kickback statute requires such a certification. I would think you all would know since you deal with this, particularly maybe Agent Warren.

MR. SREBNICK: I was relying on the documents that have been submitted in the record.

THE COURT: I understand. Let's take a break so they can have a little conference over here.

MS. TORRES: Your Honor, we will confirm that for the Court, and we'll include that in our proposed findings.

THE COURT: Does nobody know about that?

MS. TORRES: Not enough to make that representation to [121] the Court today, Your Honor.

THE COURT: Do you have a copy of a request for payment?

MS. TORRES: Not with me, Your Honor. Most of them are submitted electronically. We don't have copies with us today.

THE COURT: Okay.

MS. TORRES: We also propose to include additional briefing. We'll amend our proposed conclusions of law to rebut the suggestion that once a Medicare enrollment application is signed, that that somehow lapses at a certain point in time and, therefore, any unlawful statements or violations of law performed thereafter are somehow not caught by their original certification.

THE COURT: I don't think he means they lapse, per se. It's a little different argument, but it's close to that.

MR. SREBNICK: If I may also flag another issue that we think is developed from this record. There is a safe harbor provision under the 42 CFR Section 1001.952 that indicates that remuneration under the kickback statute does not include any amount paid by an employer to an employee who has a modified employment relationship with the employer for employment in the furnishing of any item or service for which payment may be made in whole or in part under Medicare.

To the extent that some of the CWs were employees of [122] either LTC or Professional, I think three of them were so categorized during the agent's testimony,

payments to those employees are not included in the term "kickback" because I think a company can pay its employees for generating patients.

Of course, if the patients are bogus, that's another problem, but just on the pure kickback question, we're going to address this safe harbor provision.

We believe that the testimony would allow the Court to conclude that those patients were not kickback patients. It's simply remuneration for an employee for generating business for the company. That's the second issue we intend to raise based on this presentation.

If I may have a moment.

MR. SCOTT SREBNICK: Good afternoon, Your Honor.

There is one other issue that I wanted to flag that we're looking into, which is based on the testimony today that all the kickbacks occurred in 2009 and earlier, at least on this record.

The government is proceeding under 1345, which allows the Court to restrain assets obtained as a result of a Federal healthcare offense. Federal healthcare offense is defined in 18 U.S.C. Title 24.

That definition was amended in 2010 as a result of the law that is commonly referred to as Obama Care to include the anti kickback provision in Title 42.

[123] So in other words, prior to March 23rd of 2010, violations of the kickback statute were not considered a Federal healthcare offense under 18 U.S.C. 24. There may be, therefore, an expose facto issue about—certainly about the government's ability to forfeit, in the future, assets that are a violation of the kickback statute where the violation occurred in 2009, and so that may be important to whether

the Court even has the authority to restrain the proceeds of violations of the anti kickback statute for violations that occurred in 2009.

I wish it were that clear cut because the statute, Title 24, does define a Federal healthcare offense to also involve violations of 371, the conspiracy statute relating to a Federal healthcare benefit program, and also 1347, which is the healthcare fraud statute.

The bottom line is that this is an issue that just occurred to me today as I was reading the statute again and as I was hearing the testimony about kickbacks.

I would just alert the government that that's an issue that we're going to be looking into as to whether there is even a violation that gives rise to 1345 given the amendment of Title 18 U.S.C. 24 in 2010.

THE COURT: Okay. Anything else?

MR. SREBNICK: That's all we wanted to flag so that there would be the opportunity for both sides, mainly for the [124] government, to anticipate those arguments and for the Court to be aware of them when we submit our written submissions.

As a general proposition, it's a complex case. I understand what the confidential witnesses told the government, but this is why a defendant has a right to be represented in a criminal case to challenge all of this.

What's at stake here is she's going to not have that opportunity if the Court rules that she can't use substitute assets needed to defend herself. These are all very complicated issues, and I hope the Court understands what's at stake.

THE COURT: One thing that I'm certain, and that is that none of the defendants are going to be without

counsel. Judge Marcus even indicated that—he made some kind of a strong hint.

Oh yeah, on page 1326. "It's also worth noting, remembering that a defendant whose assets have been restrained will ultimately receive a thorough hearing, the trial itself. At that trial, the defendant will have counsel, appointed if necessary, will have the right to confront witnesses," et cetera.

So, Ms. Luis will have counsel one way or the other. She may not have counsel of choice, but she certainly will have counsel. I took that as a hint from Judge Marcus that we should consider the fact that there are counsel available for [125] people who can't afford counsel otherwise.

MS. TORRES: Your Honor, if we both submit our papers next Friday, this will be the first time that we get to see their briefing on that issue. Our proposed conclusions of law are already in the record. They're consistent with what the Court asked today.

I would suggest that we be given an additional opportunity to respond to these new issues once we see them briefed.

THE COURT: So you want to wait and not file anything further? I haven't seen your proposed findings of facts and conclusions. Did you make the argument that all that is necessary is the indictment because it talks about the crimes themselves as well as the amount of tainted assets or claims that were paid?

MS. TORRES: We did that as the initial argument, yes. Then, as a back-up, just as the Court suggested today, we went through the evidence in the agent's declarations.

THE COURT: Why don't you decide by the end of the day tomorrow if you want to supplement even a little bit,

and I'll give you an opportunity to respond to them after they're filed.

At this point, only the defendant is going to file a proposed findings of fact and conclusions of law and will raise these points and argue the law.

How much time do you need after that to respond?

[126] MR. SREBNICK: Judge, may I have a moment to confer?

THE COURT: Sure.

MR. SREBNICK: That's all we have, Judge. Thank you.

THE COURT: Let's talk a minute about the last exhibit on the second supplemental declaration of Agent Warren. I think I know the answer to this, but tell me why that is relevant, Ms. Torres.

MS. TORRES: This is the chart showing the cash withdrawals, Your Honor?

THE COURT: Yes.

MS. TORRES: It is supportive of the evidence provided by a number of cooperating witnesses that they were paid kickbacks in cash, and they were very large amounts of cash.

It is also supportive of the information provided by CW9 that the defendant directed her and others to withdraw cash and pay kickbacks with that cash.

THE COURT: The reason I ask that question is because it occurred to me this might come under a 404(b) analysis, or maybe it's intrinsic. It seems to me it could go to showing intent or knowledge of where these funds came from. This appears to me to be stacking. Is that the verb to be used?

MS. TORRES: Structuring, Your Honor.

THE COURT: It doesn't have the impact of showing intent, knowledge, or feeling guilt?

MS. TORRES: We believe it is supportive of that, Your [127] Honor, yes. As CW9 said to the government, the defendant directed these large cash withdrawals that she made herself and that she directed others to make so that cash could then be used for the purpose of paying kickbacks.

THE COURT: I felt that was probably part of the impact of that, that if you structure these cash withdrawals, it might suggest that someone felt that there was something wrong with taking these monies out, if they were taking it out in one lump sum and it might have to be reported and then scrutinized. Just food for thought.

Okay, I'll wait to hear from you regarding your proposed findings of facts. How much time do you need after that?

MS. TORRES: Can I have another week, Your Honor?

THE COURT: Okay.

MS. TORRES: The current TRO expires this Friday—

THE COURT: I'm going to extend that to—I probably should have a date certain. Why don't we do it the following week. Next week we get proposed findings of facts. The following Friday we'll get the response reply. The following week, whatever that Friday is, will be the determination of the TRO. I'll extend it to that point.

I don't have a calendar, so I don't know the exact date, but we'll get an order out extending the TRO until that point in time.

[128] MR. SREBNICK: There's one matter we wanted to address at sidebar.

THE COURT: All right.

[Proceedings at sidebar follow]:

MR. SREBNICK: When I was examining the agent regarding confidential witness number 1, I inadvertently used the first name of the witness. I stopped myself. I'm not sure if anybody picked it up, but the Court Reporter probably did.

THE COURT: I did.

MR. SREBNICK: It's the government's request, and given the Court's ruling, that the matter be not available to the public that I used that word.

THE COURT: Why can't we expunge that word from the record so the—

MS. TORRES: Strike it from the record.

MR. SREBNICK: Now, I wanted to let the Court know the unsung hero of law clerks, your law clerk has been excellent in assisting us. He deserves some credit for that.

[Proceedings in open court follow]:

THE COURT: If there's nothing further for this afternoon, we'll wait for your papers.

[Proceedings recessed at 2:30 p.m.]

[129] CERTIFICATE

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

/S/ Robin Marie Dispenzieri
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